Judgment
Mar 22 May
1879

307

UNREPEALED

CIRCULAR ORDERS

OF

THE HIGH COURT OF JUDICATURE

At Fort William in Bengal,

From 1st July 1862 to 30th June 1876;

INCLUDING

SUCH ORDERS OF THE ABOLISHED COURT OF SUDDER DEWANNY ADAWLUT AS ARE STILL IN FORCE.

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CIVIL.

By
Mr. Geddes.

Calcutta:
PRINTED AT THE BENGAL SECRETARIAT PRESS.
1876.

NOTE.

In the following pages references to repealed Acts have, in many instances, been altered, and the corresponding Sections of Acts now in force have been substituted.

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BENGAL SECRETARIAT LIBRARY.

MEMORANDUM OF PRACTICE

IN

TRIALS OF CIVIL SUITS.

BEFORE TRIAL.

Presentation of plaint.

1. When a plaint is presented, the judicial officer who receives it should carefully peruse it, and satisfy himself that it exhibits a clear and distinct cause of action. He should also see that there is no misjoinder of plaintiffs.

It should appear in the plaint that the persons, if more than one, who sue together as plaintiffs, *all* jointly as a whole, and not some of them only, have the right, which it is the object of the suit to vindicate. If all the persons jointly entitled to the right which, according to the plaint, has been infringed, cannot be got to sue together, this fact should be stated in the plaint, together with the grounds of refusal, if known, and those who refuse to sue should be made parties defendant. But the plaint should distinguish the defendants against whom relief is sought from the others, and should specify the nature of the relief sought against each of the former, when it is not the same against all.

Again, it should appear in the plaint that the cause of action of which the plaintiff complains is attributable in a greater or less degree to *all* the defendants against whom relief is asked, or to those whom they represent. If the cause for suing one defendant is essentially different from that for suing another, the plaint is bad for multifariousness, and should be returned to the plaintiff for amendment.

[*Compare the following extract from Sudder Court's Circular order*, 1859, *No.* 147, *July 29th.*

Presentation of plaint.

Upon a plaint being presented, the Judge or other presiding officer should note, or cause to be noted, on the back the date of presentation, and whether it has been presented by the plaintiff in person, or by his authorized agent or pleader.

Examination thereof.

He should then examine the plaint carefully to see that it contains the particulars specified in section 26, that it is not unnecessarily prolix, and that it is verified in the manner directed in section 27.

Verification.

The personal attendance of the plaintiff in court for the purpose of verification is unnecessary. He may make the verification, and sign the plaint where he pleases. He must present it, however, in court either in person or through a duly appointed pleader, unless he is not within the jurisdiction of the court, in which case alone he is authorized, under section 16, to appear by a recognized agent. The pleader must sign the plaint, but is not required to verify it. In all these cases the plaintiff, however, is responsible for the statements contained in his plaint.

Rejection of plaint.

If the judicial officer finds it necessary to reject the plaint, he must record an order to that effect in his own vernacular, with his reasons for such order, either on the back of the plaint or on a separate paper; and the plaint, with the judgment and any deposition of the plaintiff or his pleader, or authorized agent, which may have been taken, will then be deposited in the record-room of the court in the usual manner

Return of plaint to plaintiff.

If a plaint is returned to the party presenting it for amendment, the date of its presentation and return, the name of the party presenting it, and a concise reason for its return, such as "too prolix," or "argumentative," "no jurisdiction in this court," &c., shall be endorsed upon it before it is returned, and signed and sealed by the presiding officer.

Registers of returned and rejected plaints.

A register shall be kept of all returned and another of all rejected plaints in the following form :—

1	2	3	4	5
Date of presentation.	By whom presented.	Ground or concisely { return / rejection stated	Date of { return / rejection.	Signature of judicial officer.

be and filled

This register should be bound, the pages numbered, and each page stamped with the court's seal.

If the plaint is unobjectionable, the court in which it is presented must next consider whether it is necessary to take security from the plaintiff under section 34 or 35, or to apply to the Zillah or Sudder Court, under section 11, 12, or 13, for authority to proceed with the trial of the suit.

Plaints admitted.

If the court considers the plaint admissible at once, an order must be recorded for its entry in register A, and a memorandum should also be endorsed on it at the same time of the documents which the plaintiff has filed along with it, together with the names of the persons

presenting them. This is of great importance, as documents not filed with the plaint are inadmissible afterwards, except on cause shown.

When parties claim to appear as pleaders or authorized agents, their vakalutnamahs or powers of attorney should, where practicable, be filed in original with the plaint; where the power of attorney is a general one, a copy should be filed, and the original presented for verification.] Vakalutnamahs

The written statement of the plaintiff ought not to be made a part of the plaint.

2. No other persons than those whom the plaintiff has chosen to sue can be added as parties to the suit, except by the action of the court under the provisions of section 73, Civil Procedure Code. And the power which is given to the court by this section can only be exercised at a hearing of the suit, and then only when it appears from the disclosed merits of the case that, if the suit be allowed to go on as it stands, the interests of persons who are not before the court in the matter of the suit will be likely to be affected by the result. Addition of parties.

This power should be exercised very sparingly because, as a general rule, an actually existing right of any one in property cannot be affected by a decree passed in a suit to which he is not a party.

Suits for partition, declaration of right in order to a *butwara*, contribution, redemption, foreclosure, administration of property, dissolution and winding up of partnership, and the like, cannot be properly disposed of unless all persons interested in the matter are before the court; and the principal object of section 73 is to enable the court to add necessary parties in such suits as these, when it discovers that any have been omitted by the plaintiff. It does not, however, empower the Court to admit intervenors, on their own application, as is so often done in ordinary suits, without the necessity for their presence being *primâ facie* established.

3. When a case comes on for the framing of issues, the court should again look closely at the plaint and written statement of the plaintiff, and separate from the general story such of the allegations made therein as are essential to the plaintiff's cause of action: these will generally be found very few in number; then the court should look at the defendant's written statement, and see which of these allegations are not therein admitted by implication or otherwise. The material allegations in the plaint, which appear to be denied by the defendant, or not to be admitted, put interrogatively, are the issues of fact upon which the plaintiff's case turns. Issues.

Next, the court should look at the defendant's written statement for such substantial allegations, if any there be, as serve to change the character of the plaintiff's case without actually denying it, and so to annihilate his cause of action. These allegations, put interrogatively, are issues upon which the defence turns in the event of the plaintiff's case being in effect made out.

If the allegations in the written statements be in general terms, the court should be careful to ascertain with precision what the parties are at issue upon, either by examination of the parties, their pleaders, or some person deputed to give information, or by requiring an amended written statement. The issues ought to state the questions in dispute with precision, and such precision can only be attained by enforcing precision in the written statements of the parties.

The two sets of issues, thus arrived at, are the cardinal issues of the suit, and each of them is quite single, never alternative. Besides these issues, subordinate questions of fact may also sometimes be conveniently stated.

If there are more defendants than one, the court should note against each issue the defendant or defendants between whom and the plaintiff the issue arises.

Multifariousness.

On this being done, the court cannot fail to perceive multifariousness in a plaint, if it exists there, notwithstanding the scrutiny made at the presentation. And in the event of serious multifariousness being discovered at this stage, the court should require the plaintiff to elect which cause of action he will proceed to trial upon, and should direct the remainder of the plaint to be withdrawn.

4. What is, or what is not multifariousness, such as ought thus to vitiate a suit, is mainly a question of convenience. The test is furnished by the rule that one defendant ought not to be made to answer a plaint which contains distinct and separate matters relating to other defendants with whom he has no concern.

Framing issues.

5. On the occasion of framing issues, the court should hear all the parties to the suit, and it may conveniently require them to prepare in writing a note of the issues which they think necessary for the proper trial of the matter in dispute between them ; after the court has settled and recorded the issues it considers necessary, either party may put in in writing any rejected issue, and the court should thereon make a note of its rejection.

The way to a right judgment can only be found by closely considering the plaint and written statement of the plaintiff, and by extracting from them the precise character of the plaintiff's right of suit. And in most cases the difficulty of the trial has been overcome when the right issues have been accurately framed.

On the other hand, an issue in the form so often seen of a group of entangled questions is no issue at all, and is productive of nothing but mischief at the trial; and a double or alternative issue generally indicates that the court does not see clearly on which side, or in what manner, the true issue arises. An issue in general terms, such as, "Is the plaintiff entitled to a decree?" is meaningless, and should be avoided.

Notice of day of trial.

6. Notice of the day of trial, reasonably sufficient to enable the parties to attend with their witnesses, should be given beforehand. It is the business of the parties respectively to have all their witnesses present in court on that day. The court must on application issue the requisite summonses for them without delay.

Adjournment.

7. The day of trial thus announced must not be changed, except for grave cause; and when it is changed otherwise than with the consent of all parties, reasonable notice of the change should be given, as in the first instance.

It is not a sufficient cause for adjournment that a witness desired by any party is not in attendance, unless the court is also satisfied on evidence, properly taken and recorded as evidence in the suit, that the absent witness is material, and that the party calling him has done all that is reasonably within his power to ensure his attendance, in which case, if the court be of opinion that a failure of justice will result unless an adjournment be granted, it may allow such adjournment, after hearing the witnesses which are present; but the court should in every instance at the time of granting such adjournment record its reasons for so doing, and make an order as to the costs thereof.

[*Compare extract from Sudder Court's Circular order No.* 147 *of* 1859, *July* 29*th.*

Fixing a day for hearing.

The court should fix a day, without loss of time, for the appearance of the defendant. This is a matter which will require considerable care and attention, especially if the parties are to appear in person; for it is very desirable that postponements should take place as seldom as possible, and that, as a general rule, causes should always be heard upon the day fixed. The date

Sections 41 and 45.

specified in the summons also ought in all cases to be so far distant as to afford the defendant ample time to prepare his defence. No general rule can be laid down on this subject, but the court issuing the summons ought particularly to take into consideration the nature of the case, whether simple or complicated, slight or important, and the state of its own files, together with the particulars noted in section 45.

Memorandum book and cause list.

A memorandum book, with columns for each court day in the year, showing the cause set down for trial on each date, will greatly facilitate a decision on this point, and should invariably be kept. A cause list, setting forth the day fixed for the hearing of each cause, ought also to be suspended in the court-room for the information of parties and their pleaders.

Nature of summons how determined.

In determining whether the summons shall be for the settlement of issues only, or for the final disposal of the case,* the court must of course be guided entirely by the nature of the suit and the probability or otherwise of the facts stated in the plaint being disputed by the defendant on grounds which will require the production of much evidence, or will involve much forensic contention. Where the case appears simple, and it seems probable that a correct judgment can be formed at the first hearing from the examinations of the parties or their agents, and such evidence, oral or documentary, as they can bring with them, the summons will of course be for a final disposal of the case at the first hearing.

* Section 41.

Personal attendance of parties. General rule on subject.

Much discretion will be required in the exercise of the powers vested in the courts by section 42 of compelling the personal attendance of the plaintiff or defendant. On the one hand, it is important that this power should not be used so as unnecessarily to harass suitors. On the other, it is one which, if exercised judiciously, will tend to curtail litigation, and will enable the court to arrive at more satisfactory conclusions than would otherwise be possible. The best general rule which can be laid down on this subject probably is that parties should only be summoned in those cases where it seems certain that they must have a better personal knowledge of the facts than any one else, and where facts are disputed, the correct determination of which is essential to the formation of a satisfactory judgment. To summon a zemindar in many of the disputes which arise between himself and his ryots would generally be a vexatious proceeding, because men of this class usually conduct their affairs through the agency of others, and would therefore be unable to give direct testimony; but in cases where the question is whether the defendant personally executed a certain deed, or made the contract which the suit seeks to enforce, the interests of justice clearly require that the party himself should be brought into court.

A wide discretion, however, is left to judicial officers in this matter, and the Court would impress strongly upon the Zillah Judges the importance of watching carefully the manner in which it is exercised by the lower courts.]

Proof of service of process.

8. Whenever it is necessary, previously to entering upon the trial (as under section 113, Civil Procedure Code), or at any other time, for the court to satisfy itself that a summons or other process has been duly served, the judicial

officer should for that purpose take the evidence of the serving officer and of the person who accompanied him to identify the person to be served; and the judicial officer should especially bear in mind that the fixing of a copy of the summons on the door of the dwelling-house does not constitute effective service under section 55, Civil Procedure Code, unless reasonable efforts have first been made without success to serve the defendant personally, and unless, moreover, the defendant is actually dwelling in the house at the time. These conditions must therefore be established by the evidence before the judicial officer can be rightly satisfied that service has been duly effected. If the person to be served is elsewhere than at the house pointed out, the serving officer must either seek him out, or return the process under section 57, Civil Procedure Code; but the fact of this service of summons must always be regularly proved before the commencement of a trial *ex parte*.

THE TRIAL.

Course of trial.

9. When the course of the trial has been once entered upon, it should not afterwards be interrupted except for grave cause, but should be continued from day to day, if necessary, until it is ended.

Postponement.

10. Whenever the day for commencing the trial is altered, or whenever the trial after it has been entered upon is postponed, the order for the alteration or the postponement respectively, together with the reason for making it, should be clearly written out on a separate piece of paper, and should be dated and signed by the judicial officer who makes it.

Beginning of trial. Proving party.

11. The trial should begin by the party on whom the burden of proof lies, and who for the time may be designated the proving party, stating the case which constitutes his cause of action or defence, as the case may be, and giving the substance of the facts which he proposes to establish by his evidence.

The case thus declared ought to reasonably accord with the party's pleadings, *i.e.*, plaint or written statement, because no litigant can be allowed to make at the trial a case materially different from that which he has placed on record, and which his adversary is prepared to meet.

And the facts proposed to be established must in the whole amount to so much of the material part of his case as is not admitted in his opponent's pleadings, and which, if proper issues have been framed, will be found concentrated in them.

Examination of witnesses.

12. After stating his case, the proving party should call his witnesses *seriatim*, and by questions, which ought not to be put in a leading form, should elicit from each of them the material facts to which he can speak of his own knowledge. A general request to a witness to tell what he knows, or to state the facts of the case, should as a rule not be allowed, because it gives an opening for a prepared story.

13. The examination of the witness should be effected by the party who calls him, or by his pleader.

The questions should be simple and so framed as to elicit from the witness, as nearly as may be in chronological order, all the facts relevant to the subject in issue between the parties which he has witnessed, *i.e.*, in any manner directly observed; but on any disputed point they should not be such as to *lead* or suggest the answer; nor such as to induce a witness, other than an expert, to state a conclusion of his reasoning, an inference of fact, or a matter of belief, in the place of describing what he actually observed.

In like manner, the cross-examination should be effected by the opposite side, only that in this case leading questions may be allowed.

Then should follow re-examination by the first side for the purpose of enabling the witness to explain answers which he may have imperfectly given on cross-examination, and to add such further facts as may be suggested and made admissible.

During the course of this examination, cross-examination, and re-examination, the presiding officer ought not *as a general rule* to interfere, except, when necessary, for the purpose of causing questions to be put in a clear and proper shape, of checking improper questions, and of making the witness give precise answers. At the end of it, however, if it has been reasonably well conducted, he ought to know pretty nearly the exact position of the witness with regard to the material facts of the case, and he *should then put any questions to the witness that he thinks necessary.*

The examination of witnesses called by the court under the provisions of section 171, Act VIII of 1859, and under

section 9, Act XXIII of 1861, should be effected by the court itself; and after such examination, if the parties to the suit desire it, they should be cross-examined by the said parties. Upon the close of the cross-examination, re-examination of such witnesses, if necessary, should be conducted by the court according to the rules of re-examination referred to above.

Exhibits.

14. Every document or writing which a party intends to use as evidence against his opponent must be formally tendered by him in the course of proving his case. For this purpose it shall be taken from the file of the case if it has been put on it before the trial in pursuance of any enactment of the Civil Procedure Code; otherwise it must be called for from, and produced by, the person in whose custody it is; the fact of a document being in the possession of a servant or agent of the party on whose behalf it is produced is not of itself a reason for allowing it to be produced after the time prescribed by section 128.

If the opponent does not then object to the document being admitted in evidence, and if the document is not such as is forbidden by the legislature to be used as evidence, the judicial officer shall admit it, and having marked it with a distinguishing mark or letter, by which it should when necessary be ever after referred to throughout the trial, should cause it, or so much of it as the parties may desire, to be read aloud.

Issues as to documents.

15. If, however, on the document being tendered the opposite party objects to its being admitted in evidence, then commonly two questions arise:—first, whether the document is authentic—in other words, is that which the party tendering it represents it to be; and secondly, whether, supposing it to be authentic, it constitutes legally admissible evidence as against the party who is sought to be affected by it. The latter question in general is matter of argument only, but the first must be supported by such testimony as the party can adduce. If the judicial officer is of opinion that the testimony adduced for this purpose, developed and tested by cross-examination, makes out a *primâ facie* case of authenticity, and is further of opinion that the authentic document is evidence admissible against the opposite party, then he should admit the document and have it read, as he would have done under the directions of the last rule had it not been objected to.

But whether the document is admitted or not, it must be marked as soon as any witness makes a statement with regard to it; and if not earlier marked on this account, it must at latest be marked when the court decides upon admitting it.

Identification of documents.

16. But before a witness is allowed to, in any way, identify a document, he should generally be made by proper questioning to state the grounds of his knowledge with regard to it.

For instance, if he is about to speak to the act of signature, as just above supposed, he should first be made to explain concisely the occurrences which led to his being present on the occasion of the signing: and if he is about to recognize a signature on the strength of his knowledge of the supposed signer's handwriting, he should *first* be made to state the mode in which this knowledge was acquired. This should be done by the party who is seeking to prove the document; and the opposite party, if he desires to do so, should be allowed to interpose with cross-examination on this point before the document is shown to the witness.

And it is the duty of the court, in the event of a witness professing to recognize or identify writing, always to take care that his capacity to do so is thus tested, unless the opposite party admits it. And if on the examination effected for this purpose, it appears that the witness was not in fact present at the time of signing, or is not reasonably competent to identify the handwriting, then the judicial officer ought not to receive his testimony on the matter of the signature.

Signature by the pen of another.

17. The signature of one person which purports, or which appears by the evidence, to have been written by the pen of another, is not proved until both the fact of the writing and the authority of the writer to write the name on the document is proved.

And in the case of the signature of a *purdanisheen*, evidence must also be given of her identity with the signer, before proof of the signature can be considered sufficient to justify the admission of that document in evidence.

In the case of an illiterate person, who cannot read, it should be proved that he understood the contents of the document.

18. With respect to the provisions of law which relate to the production and proof of old documents, the court ought to satisfy itself by every reasonable means that the

document not only comes from, but has since its inception continued in, the proper custody.

19. Whenever copies may by law be received, it must be remembered that the circumstances which make the copy admissible instead of the original are quite distinct from those which make the document (original or copy) relevant to the issue as admissible in evidence as against the opposite party.

Opposing parties.

20. When, according to the foregoing directions, the party upon whom the burden of proof first lay has stated his case, and the witnesses adduced by him have been examined, cross-examined, and re-examined, and all the documents tendered by him have been either received in evidence or refused, then it devolves upon each of the opposing parties who have distinct cases to state their respective cases in succession; and when all of them have done this, then the evidence, whether oral or documentary, adduced by each in order should be dealt with precisely as in the case of the first party. And on its termination, the first party should be allowed to comment in reply upon his opponent's evidence.

Foreign matter. Additional evidence.

21. If, however, the case of an opposing party is such as to introduce into the trial matter which is foreign to, and outside, the case of the first party, and the evidence given by him, then the latter must be allowed, if he so desires, to rebut this by additional evidence, and his opponent must be allowed to speak upon it by way of reply, before the first party himself makes his own reply, as just mentioned; but this is not to be understood as entitling the first party to ask for an adjournment for that purpose. He is bound, unless the court sees good reason to the contrary, to be prepared with such rebutting evidence.

Recall of witnesses.

22. The judicial officer who presides at any trial has discretion to recall any witness of any party for further examination or cross-examination, whenever he thinks it necessary for the ends of justice to do so; but the beforementioned order ought not to be departed from without good reason.

When any departure from this order is thus necessary, the judicial officer should record the reason for it in the form of a written note.

The practice of allowing witnesses of either party to be examined indifferently as they happen to attend, without

regard to the order above laid down, is inconvenient and irregular.

Record of another case. Official papers.

23. Whenever it appears to a judicial officer necessary for the ends of justice to exercise the power which is conferred on the court by section 138 of the Civil Procedure Code, he should record his reason for so thinking in the form of a written note. And all information which is procured in this manner should be adduced in open court before the parties at a hearing, or at an adjourned hearing of the suit, and can only be received and considered by the court after having been so adduced.

In regard to the exercise of this power on the application of a party, the judicial officer should not send for an original paper or document which that party could procure on his own application, or for any such document as process, pleadings, decrees, orders, or other proceedings in a suit, or any official papers of which that party could procure an officially authenticated copy, unless there is grave cause for so doing, or especial reason for inspecting the actual document itself.

Filing accounts.

24. When accounts have to be taken in the course of a suit, then it is incumbent on the accounting party, either at the time of filing his written statement, or at some other time before trial of this matter, to be fixed by the court, to file an account. The court should then allow reasonable time to the opposing party to examine the account and present a statement of his objections to it. This account must be verified by the oath or affirmation of the accounting party, and each item on the credit side, *i.e.*, each item of disbursement on his part, objected to by the opposing party, must be proved by sufficient evidence. And the opposing party has the right to meet this by evidence produced for the purpose of falsifying the account in any particular, or of adding new items to the debit side.

The judicial officer should in such cases first take the evidence adduced in support of the account, then that adduced by the opposing party in the same manner; and should finally, on consideration of the whole, determine, *as nearly as possible*, the true state of the account as against the accounting party. The matter of account must in short be treated as a separate subject of trial; in a certain sense independent of the rest of the suit.

And it may even sometimes be convenient that the matter of account should be heard and determined at a time specially fixed for the purpose by an adjournment effected

when the hearing of the principal issues between the parties, other than that of the account, has come to an end. And when this is so, a time may be appointed for filing the verified account (which is in effect a supplementary written statement), and a subsequent time for the filing of objections thereto by the opposing party. The final hearing of the matter of account should come on at a reasonable interval after this on a day fixed for the purpose.

Local inquiry.

25. Whenever it becomes necessary in the course of a suit that a Commissioner or Civil Court Ameen should be appointed to make a local inquiry, the judicial officer who makes the order for such inquiry should write the order with his own hand, and shall specify therein—

(*a*) the precise matter of the inquiry, and

(*b*) the reason why the evidence bearing on that matter could not reasonably have been taken in the usual way at the trial in court;

and the Commissioner's duties should be strictly limited by his *perwanah* to *such matters as* taking accounts and depositions of witnesses, inspecting the land or other subject of dispute, and reporting to the court, either in the shape of a map, or in writing, or both, the existing physical features of the subject inspected, its boundaries and situation relative to other objects, and so on, as the case may be.

The court has no power to depute to him the determination of any issue between the parties.

The functions of the Commissioner or Ameen are limited to procuring evidence and information for the purposes of the trial; and this evidence, including the maps, reports, &c., of the Ameen, must be adduced in open court before the parties, and be subjected to objections and testing according to the foregoing rules, like all other evidence.

Return of documents.

26. Immediately on the close of the trial in court, all documents which may have been filed with the plaint in pursuance of section 39 of the Civil Procedure Code, or been received by the court in pursuance of sections 128 and 129, *and* which in consequence of not having been tendered in evidence at the trial have not been either placed on the *trial nathi* or returned to the owners, shall be returned to the parties who filed them, or who brought them into court, as the case may be.

The practice of adjourning a case for argument after all the evidence has been given should, as a rule, not be allowed. But this observation does not extend to an adjournment when

reasonably necessary for a reply on the whole case by the party who is entitled to such reply, nor to an adjournment for argument on a question of law, which may have arisen during the trial, and may have been, for convenience sake, reserved for argument until after the taking of the evidence.

Judgment.

27. When the trial in court is over, the judicial officer should proceed at once, or as soon as possible, to the consideration of his judgment.

It is essentially necessary that he should do so while the demeanour of the witnesses and their individual characteristics are fresh in his memory. He should bear in mind that his first duty is to arrive at a conscientious conclusion as to the true form of those facts of the case about which the parties are not agreed, and that the only means to this end is afforded by the testimony of witnesses. Documents, generally speaking, are only valuable as being the utterances of, or representations made by, those who signed them, or gave them, or assented to them, and they depend for their value upon the circumstances under which the persons to be affected by their production became parties to, or concerned with, them. All this can only be made known by oral testimony.

Many documents, too, such as account books, *jamabandi* papers, *khasras*, and so on, are at the best contemporaneous memoranda of the transactions which are entered in them, and have no force in favour of the party on whose side they are made, except so far as they corroborate the direct testimony of witnesses to those transactions; as, for instance, of the cashier to the payment or receipt of the money items in the account; of the *gomastha* to the collections actually made by him according to the *jamabandi*, &c. Also, in the relations between the disputing parties, the facts which constitute the immediate cause of action, *i.e.*, the occurrences which entitle and oblige the plaintiff to bring his suit, and those which immediately preceded them in the order of time, is usually to be found the clue to, and the best test of, the merits of the dispute. These can seldom be obtained otherwise than from the mouths of witnesses. It is, therefore, the duty of the judicial officer throughout the trial to keep a scrutinizing and attentive eye upon each witness as he is being examined, and, above all, to constantly remember that his chief business is to get at the facts through the witnesses. If he deliberately and intelligently directs his attention to this object, he will almost certainly succeed; and the

principal facts being ascertained, the right judgment is very rarely matter of doubt.

A note of all orders made by the court relative to change of parties, or bearing upon the course of the hearing of the suit, and a note of all material facts and occurrences which may have happened during the hearing of the suit, must be carefully recorded from time to time and appended to the record.

AFTER THE TRIAL.

28. The decretal order which carries the judgment into effect should be framed by the judicial officer with the most careful attention to its object. It must be precise and definite in its terms, and must specify clearly and distinctly what each party affected by it is ordered to do, or to forbear from doing. Every declaration of right made by it must be concise, yet accurate; every injunction simple and plain. Decretal order.

29. Every decree should be signed by the pleaders of the parties to the suit, who appeared by pleaders, before it is signed by the judicial officer who passed it; or in the event of any pleader failing so to sign, the cause of the default shall be certified on the decree by that officer. Signature by pleaders.

30. In cases where *wasilat* is asked for in the plaint, the question as to the amount thereof (if any) which should be paid to the plaintiff in respect to the period of dispossession before and up to the date of filing the plaint must be distinctly raised and, if possible, determined at the hearing of the suit; and the decree must specify clearly the portion of this amount which each defendant is to pay either severally or jointly with others to the plaintiff. In the event, however, of its being necessary for any good reason to reserve the determination of this question until proceedings are taken to execute the decree, the order to this effect, with the reason for making it, should be recorded in conformity with the directions of paragraph 27. Wasilat.

It is the duty of the judicial officer to ascertain and determine from the evidence placed before him by both sides what is the amount of *wasilat*, if any, which is due to the plaintiff, and he has no more authority to leave this question to the decision of an Ameen than he has to do the same with any other question which arises between the parties in the suit.

An Ameen may, when necessary, be sent to effect a local investigation; the reasons for adopting this course should be fully recorded. When an Ameen is deputed, his duty is merely to collect evidence for the court, and to report the state of facts which he has observed.

In such case the court must proceed in strict conformity with paragraph 25, and the deposition of witnesses which the Ameen may take, and his own report when returned, together with his own testimony, if he be examined, constitute part of the evidence upon which the judicial officer has to decide the question before him, and must be produced to the court in the presence of the parties at a hearing of the matter in dispute just in the same manner as all other evidence.

Amount due under decree.

31. Whenever on an application for the execution of a decree, or whenever in the course of execution proceedings, it is necessary to ascertain the amount of money which is, or which remains due under the decree, the judicial officer should at the time himself take the record into consideration for this purpose, and therefrom arrive at his own conclusion on the matter.

Application for execution by one or more holders of a decree.

32. When an application is made to a judicial officer under section 207 of the Civil Procedure Code for the execution of a decree by one or more persons, not being all the persons in whose favour the decree appears to be, he should cause notice thereof to be given to the remaining decree-holders or their representatives, and also to the person or persons against whom the application is made; and he ought not to grant the application, unless, after hearing all these parties, or after giving them an opportunity of being heard, he is satisfied that there is good reason for the application.

In all cases he must treat such an application as an application for execution of the entire decree, so far as it remains unexecuted or unsatisfied.

If the application is for execution of a fraction, or any proportionate part of a decree, he should refuse to entertain it.

—by transferee.

33. When an application for the execution of decree is made under the provisions of section 208 of the Civil Procedure Code by a person claiming to be entitled to the benefit of the decree in consequence of a transfer of the same to him from the original decree-holder, either by assignment

or by operation of law, the judicial officer should cause notice of the application to be given to the original decree-holder or his representative, when possible, and also to the person or persons who appear on the record as judgment-debtors, or against whom the execution is sought; and he ought not to grant the application unless, after hearing all these parties, or after giving them an opportunity of being heard, he is satisfied that the transfer has been in fact effected, and that the persons against whom the execution is sought will not be prejudiced in their rights by the change of decree-holder.

In case he thinks proper to grant the application, he should record his reasons for so doing, and make an order that thenceforward the name of the applicant will stand on the record as decree-holder in the place and stead of that of the decree-holder from whom the transfer may have taken place.

In the case of an assignment by operation of law, the change of decree-holder may always be safely made. But it is otherwise in the case of assignment by private contract. For instance, if at the time when an assignment of the latter kind is made, there exists a cross-decree against the assignor in favour of the person who is his judgment-debtor under the assigned decree, whether the two decrees be decrees of the same court or not, then the application for the change of decree-holder ought not generally to be granted without the consent of the judgment-debtor, because the introduction, under these circumstances, of the assignee in the place of the assignor might place serious difficulty and embarrassment in the way of the judgment-debtor towards obtaining satisfaction of his own decree.

Scarcely any part of a judicial officer's duty calls for the exercise of more care than the duty of considering applications for execution of decrees made by persons claiming to be entitled thereto under some form of transfer. The granting of these applications, without discrimination, is the source of much mischief and prolonged litigation.

Attachment of judgment debt

34. The attachment of a judgment-debt, *i.e*, of a debt the payment of which is directed by a decree, does not necessarily stay the execution of the decree, though it has the effect of forbidding the debtor from paying the debt immediately to his creditor; but if pending the attachment the debt, or any portion of it, be realized by execution and

brought into court, it remains there subject to the attachment, and can only be dealt with under section 237 of the Civil Procedure Code.

In the event of its becoming necessary in execution of a decree to realize the money interest of the judgment-debtor in another decree, or a judgment-debt due to him under another decree, this must generally be done by the appointment of a manager under section 243 of the Civil Procedure Code to sue out execution of the decree; the attaching court should never sell the decree, unless there appears to it to be special reason for that course, and in that case the judicial officer ordering the sale is enjoined to embody in his order a written note of that reason.

After-procedure.

35. When, after the attachment of a judgment-debt, the attaching court either sells the debt or appoints a manager to sue for its realization, the purchaser of the debt in the one case, or the manager in the other, becomes an assignee of the decree within the meaning of section 208 of the Civil Procedure Code, and so entitled to apply for execution of the decree. If he makes such application, it ought to be granted, unless the judicial officer to whom the application is made, after hearing all parties concerned, or after giving them an opportunity of being heard, is of opinion that, by reason of a prior assignment or for other sufficient cause, the sale or appointment made by the attaching court failed to pass to the applicant any right to receive the proceeds of the decree when realized.

The questions which present themselves on applications of this kind generally arise by reason of the attaching court having attached the judgment-debt as being a debt in fact due to some third person other than the nominal decree-holder. The question may even be raised by an objector who comes in after the application for execution has been granted, and in that case the consideration of it falls rather under section 237 than under section 208 of the Civil Procedure Code.

But whatever be the occasion of the objection being made, the judicial officer should always give it his most serious attention, because, if his decision has the effect of causing the money to be paid to the wrong person, the true owner may be driven to bring a suit against that person for the recovery of it.

Transmission of a decree to another Court.

36. When an application is made to a judicial officer requesting him to transmit a decree of his court to some other court for execution, he must first satisfy himself that the applicant is entitled to have execution of the decree, and that the decree cannot be executed within the jurisdiction of his court; then he should prepare a copy of the decree, exclusive of the judgment or any other matter, also a copy of any order which may have been made (as, for instance, under section 208, or under section 216) entitling the applicant to obtain execution of the decree, and also a certificate of the extent to which the decree has, at the date of the certificate, been satisfied, and the date of the last proceeding to enforce or keep the decree in force; these papers, and these alone, he should transmit to the specified court.

ON APPEAL.

Appeal.

37. In the event of an appeal being instituted against the decision of the court of first instance, the *trial nathi* should alone be transmitted to the appeal court for the purpose of the appeal, unless other appers be expressly required by the appeal court; as provided for in the next following section. When the appeal is based on matter recorded in the *process nathi*, the appellant should give notice to the appellate court that the latter will be required.

Materials for trial.

38. The appeal court should hear and determine the matter of appeal between the parties upon those materials only which are in the *trial nathi*, provided that, in the event of its being satisfied that the *trial nathi* is in any particular incomplete, it may send to the lower court for any paper or deposition which may appear to be wanting, as also for the *process nathi* when required under the last section; and of course nothing in this paragraph must be taken to interfere with the discretion and authority reposed in the appeal court by sections 354 and 355 of the Civil Procedure Code.

Orders by appeal court.

39. Every order of the appeal court made under the last paragraph, or under sections 354 and 355 of the Civil Procedure Code, shall be made in open court during the hearing of the appeal, and the reasons for making it shall

be then publicly stated. Also a note of the order and the reasons shall be recorded as directed in paragraph 40.

Special Appeal *nathi.*

40. In the event of a special (or second) appeal being preferred to the High Court, the Lower Appellate Court should transmit to the High Court the *trial nathi* intact, together with the following papers of its own court formed into a supplementary *nathi*, namely:—

(*a*). The recorded note of orders and reasons, if any, which is the subject of the last paragraph.

Notes—Memoranda.

(*b*). A note of all orders made by the appellate court relative to change of parties, or bearing upon the course of the hearing of the appeal, and a note of all material facts and occurrences which may have happened during the hearing of the appeal.

(*c*). Depositions (if any) taken by the appellate court itself in open court during the hearing of the appeal, and documents produced before it in pursuance of any such orders.

(*d*). Papers and depositions transmitted to the appellate court in consequence of any such orders, and read in open court during the hearing of the appeal.

(*e*). The judgment of the appellate court.

(*f*). The formal decree of the appellate court.

MISCELLANEOUS.

Trial and process *nathis.*

41. Due observance of the foregoing directions will, at the termination of the trial in the court of first instance, have effected a separation of the aggregate papers of the case into two portions, namely:—

(*a*). The *trial nathi.*

(*b*). The remaining papers, which will consist solely of processes of court, petitions with the orders made thereon, affidavits, and the like; and will not comprise any documents belonging to the parties; and which shall be termed the *process nathi.*

Petitions in execution proceedings.

42. Petitions of parties to the decree or their representatives, of the decree-holder or of his assignee, preferred in the course of execution proceedings, issues framed, and evidence, whether oral or documentary, taken therein, and the court's judgment and order passed thereon, must be added to, and treated as part of, the *trial nathi;* all other petitions and papers in the same proceedings must be added to the *process nathi.*

CIRCULARS ON PROCEDURE ARRANGED ACCORDING TO THE ORDER OF SUBJECTS IN THE CODE.

JURISDICTION.

Secs. 1—15.

The High Court direct [1869] that an alphabetical list may be made by every District Judge and Judicial Commissioner, after reference to the records of the revenue survey, of the villages in his district, showing the thana and moonsifee jurisdiction in which each village is situated. The list should be prepared in the form indicated below, and should be prefaced with an abstract statement on a distinct sheet, exhibiting in three columns *the names of moonsifees, the subdivisions with which they are conterminous, and the thanas comprised in each chowkey.*

2. The High Court desire at the same time that it be understood that the statements contained in such lists are not to be taken as conclusive and irrebuttable evidence as regards the jurisdiction within which the villages therein enumerated are situated.—(*C. O.*, 1869, *No.* 14, *December* 16*th.*)

Alphabetical List of Mouzahs in the District of

Number of mouzah in the list prepared by Boundary Commissioner.	Name of mouzah.	Thana in which the mouzah is situated.	REMARKS.

Jurisdiction in personal actions.

Section 3, Act XXIII of 1861, does not, and was not intended to, interfere with the provisions of section 5, Act VIII of 1859, defining the cases in which the civil courts have jurisdiction. Act XXIII of 1861 repeals section 33, Act VIII of 1859, but re-enacts its recast in section 3, adding section 4 to it. The word "and" between the words "arise" and "that" in section 3 of Act XXIII of 1861 must be read in a disjunctive, and not a conjunctive, sense; in other words,

section 5 of Act VIII of 1859 enacts that a court of justice has jurisdiction in personal action, if either the cause of action have arisen, or the defendant at the time of the commencement of the suit dwell or personally work for gain within the limit to which the jurisdiction of the court extends; and section 3 of Act XXIII of 1861 enacts that if neither one nor the other of these three facts are found to exist, a plaint involving a personal action should be returned to the plaintiff in order to its being presented in the proper court.—(*C. O.*, 1862, *Sudder Court*, *No.* 203, *April 7th.*)

Venue.—Suits for lands situated in different jurisdictions.

Secs. 4—12.

The High Court is very frequently called upon to pass orders upon applications made under section 12, Code of Civil Procedure, by District and other Judges for leave to proceed with the trial of suits for property situate within the limits of different districts, and also upon applications, chiefly from Courts of Small Causes, for orders to be made under section 4, Act XXIII of 1861.

2. These applications, in a great number of instances, have not been accompanied by any sufficient statement of the facts of the case, and it seems [1872] to have been the common belief that such applications, and the orders of the High Court to be made upon them, are mere matters of form. But the controlling power entrusted to the High Court by the sections above-mentioned is meant to be really exercised, and it cannot be exercised without sufficient materials.

3. The Court therefore find it necessary to direct that in all applications under section 12, Code of Civil Procedure, the facts shall be fully set forth, *i.e.*, the names and residences of all the parties, and the nature and value of the different portions of the property in dispute, which are situated in various jurisdictions; and that, when any of the defendants reside beyond the local jurisdiction of the court in which the suit has been commenced, it shall appear that such defendants have had an opportunity of showing cause.

4. When the court is asked to make an order under section 4, Act XXIII of 1861, the facts should be similarly stated, and it should appear that, in the opinion of the Judge, it will be just and reasonable, as regards defendants as well as plaintiffs, that the trial should take place in

a jurisdiction within which one or more of them do not reside.—(*C. O.*, 1872, *No.* 25, *July* 15*th.*)

For forms see general letter No. 11, *dated* 6*th July* 1876.

Circular order No. 25, dated 15th July 1872, was not intended to be taken as entitling defendants, in cases referred under section 12, Act VIII of 1859, to show cause by reason of the property in the suit being situated in different districts, when none of the defendants reside beyond the jurisdiction of the court in which the suit is instituted.—(*C. O.*, 1874, *No.* 19, *July* 27*th.*)

Verification of plaints, written statements, and applications.

The High Court directs that all verifications,* whether of plaints, written statements, or applications requiring verification, presented in any civil court subordinate to the High Court, shall contain a true specification of the *date* and *place* at which they are signed.—(*C. O.*, 1870, *No.* 5, *February* 22*nd.*)

* *Vide* sections 27, 28, 123, 164, 273, Act VIII of 1859.

Prompt registration of plaints.

As, from certain irregularities that have recently [1865] been brought to their notice, the Court believe that plaints presented in civil courts are not examined without delay, and either registered (section 38) or dealt with in one of the modes described in sections 29, 30, 31, 32, 34, 35, Act VIII of 1859, and sections 3 and 4, Act XXI of 1861, but are for some time allowed to remain neglected by the Judge before whom they have been presented, the Court think it necessary to remind all Civil Judges of the extreme importance of complying without delay with the provisions of the law above quoted.

2. No plaint should ordinarily remain unregistered for more than one day, for it is obviously the duty of every Judge to take up at latest on the day following their presentation all plaints filed in his court. If such a practice is not rigidly observed, the Court can have no confidence that in other respects the procedure laid down in Act VIII of 1859 is acted up to. Such an irregularity cannot be too strongly condemned; for not only does it tend to encourage corruptness among the court amla, but it causes deception by misrepresenting the files, which should be correctly exhibited on the statements periodically submitted to the Court.

3. The Court therefore, in reminding Judges of the existence of such irregularities, desire to record their determination to adopt the severest possible measures, not only towards their repression, but to signify their extreme displeasure at the conduct of any officers who, after this warning, may neglect to conform to the law which recognises no delay in such simple matters of form.

4. The Court rely upon the exertions of the superior local courts to check such irregularities by a strict supervision over the proceedings of their subordinates, such as is afforded to them as courts of appeal, or in visits of inspection enjoined by circular order No. 15, dated 14th May last.—(*C. O.*, 1865, *No.* 10, *May 19th.*)

Amendment of plaint to be inserted specifically in body of plaint itself.

It has been noticed by the High Court that when a civil court allows a plaint to be amended, instead of the amendment being forthwith made in the plaint itself, the order to make the amendment is merely filed with the record.

The Court points out that when such permission is given, the amendment must be made in the plaint at once, and orders that it be attested by the signature of the presiding officer.—(*C. O.*, 1876, *No.* 7, *1st May, adopting a C. O. of the H. C., N. W. P.*)

Designation of defendant in suits against Government, against a Government officer quâ *officer, against wards of court.—Section* 26.

It having been brought to the notice of the High Court that in suits against Government, or against an officer of Government in his official capacity, as well as in suits relating to wards of court, plaints are frequently drawn up with an inaccurate designation of the defendant and an entire disregard of the requirements of the law as to the manner in which he should be described, the attention of all civil courts subject to the control of the High Court is drawn to the subject.

2. In all suits against the Government, or one of its officers in his official capacity, the requirements of the Code of Civil Procedure (Act VIII of 1859) section 26, clause 6,

should be carefully observed, and no other officer named, or description inserted, than what is there prescribed. And in the case of suits against a ward of court the defendant should be described in the manner set forth in Act IV (B. C.) of 1870, section 69.

3. When the plaint contains a description of the defendant, not in conformity with the law, the duty of the Court in which it is presented will be invariably to return it for amendment.—(*C. O.*, 1875, *No.* 5, *May 22nd.*)

Service of Processes, General Rules.—Circular Order, 1871, *No.* 9, *April 6th.*

The returns transmitted by the local Courts of the service of writs of summons and of notices of the hearing of appeals issued by the High Court for service within the jurisdiction of local Courts are in many instances so insufficient as to necessitate postponements, the re-transmission of each process for further proof, or the issue and transmission of fresh process for service.

2. The Courts frequently send up nothing but the nazir's return, which is often no more than a mere report of oral statements made to him by others as to the mode of service. Such returns, without proof of the statements contained therein, are of no value.

3. By the Civil Procedure Code, whenever it is necessary that summons should be served beyond the limits of the jurisdiction of the Court which issued it, the Court which is called upon to serve the summons is by section 59 placed in the same situation as if it had itself issued the summons, and ought to satisfy itself that the summons has been effectually served as directed by the Act.

4. The duty of the local courts is, notwithstanding repeated admonitions, so often imperfectly performed in this matter that it appears to the High Court necessary to remind them that no court can rightly proceed to hear a suit or an appeal *ex parte* until it has been proved to the *satisfaction* of that Court that the summons to a defendant to appear, or notice to a respondent of the hearing of an appeal, as the case may be, has been duly served, *i.e.*, has been served strictly in such manner as the law provides.

5. The service should be personal in all cases in which personal service is practicable, and the Court ought not in *ex parte* cases to act upon anything short of personal service, until it is satisfied that personal service could not reasonably be effected.

6. The nature of the proof of service which the Court ought to require in each case, according as it falls under one or another of the various sections of the Civil Procedure Code relating to service of summons on defendants, may be shortly stated as follows:—

Proof of Service—(General).

(1). When the summons or notice is served on the defendant or respondent personally, the service and the signature of the defendant on the back of the summons or copy should be proved by the affidavit or solemn declaration recorded in writing of the person who actually effected the service; and the identity of the person served, with the party to whom the process is addressed, should be proved by the affidavit or solemn declaration of some one personally acquainted with the party to be served.

NOTE.—The party causing the service to be effected must give proof to this effect. It is a matter of which, ordinarily speaking, the serving officer would have no knowledge.

(2). If the service be made under section 49 of Act VIII of 1859 on an agent; it should be proved that this person was empowered to accept service, either by reason of his being one of the class of recognized agents described in section 17 of Act VIII of 1859, or by virtue of appointment for that purpose in writing.

(3). If the service be made under section 53, it should be proved by the affidavit or solemn declaration of the officer effecting the service, and, if necessary, of some other person or persons acquainted with the facts, that the defendant or respondent could not be found and had no agent empowered to accept the service, and that the person to whom the process was delivered was an *adult* male member of his family, and was actually residing with him at the time of such service.

(4). If the service be made under section 55, it should in like manner be proved that the defendant or respondent could not be found, and that there was no agent empowered to accept the service, nor any other person on whom the service could be made, and that the defendant or respondent *was actually dwelling* (*a*) in the house on the outer door of which a copy of the process was fixed at the time when it was so fixed.

(*a*) The facts leading to this inference should be stated.

(5). If the service be made under section 57, it should in like manner be proved that the house upon the door of which a copy of the process was fixed was the house in which the defendant or respondent last resided (*b*), and that the service was made in all respects in conformity with the order for substituted service, which should accompany the process.

(*b*) It should be stated how long, and until when, he resided in the house, and what has become of him.

(6). If the service be made under section 61, it should be proved in like manner that the summons or notice could not be served on the defendant or respondent in person, and that he had no agent empowered to accept the service, and that the person to whom the process was delivered was an agent of the defendant or respondent in charge of the land or other immoveable property forming the subject-matter of the suit.

(7). If the service be made under section 63, it may be proved that the summons or notice was left at the *registered* office of the Company, or was delivered to any Director, Secretary, or other principal officer.

(8). If the summons or notice, when tendered, be declined by the defendant, or his agent, or a male member of his family, besides the proof required as to identity, &c., as stated above, it should be proved that the party was informed that the document tendered was a summons or notice, and that he was made acquainted with the nature and contents thereof.

(9). The proof which is above described as requisite, according to the case, may be either by the affidavit or verified statement of the person by whom the service was effected, and of any person who may have accompanied the serving officer for the purpose of identifying the party to whom the process was addressed, or otherwise directing or assisting the serving officer; or, if deemed necessary, by the examination in Court as witnesses of such persons as the court may think fit to examine.

(10). When the summons which has been served is the summons of another Court transmitted to the serving Court for the purpose of service only, then, upon service being effected, this latter Court should re-transmit the summons to the Court by which it was issued, together with the nazir's return and the affidavits, verified statements, or depositions of the serving officer and the witnesses, relative to the facts of the service.

7. The foregoing directions apply to, and must be followed in the cases of, all notices and judicial processes which, by section 108 of Act VIII of 1859, are required to be served in the manner directed for the service of summons upon a defendant to appear and answer.

Certificate by Judge of due service of Summons under Section 59.

"I do hereby certify that I did on the day of "18 cause a copy of the within summons (or notice) "to be served upon the above-named respondent,"

or

" that the above summons (or notice) was "not, in my opinion, duly served upon the above-named "defendant or respondent, for the following reasons:—"

The ZILLAH, *of* 18 . } *Judge.*

Directions for Serving Officers, and forms of Returns to be made by Nazirs.

I. Nazirs in serving summonses and other process under Act VIII of 1859 must carefully attend to the directions of the Act as to the service of process. Their attention is particularly called to the fact that, wherever it is practicable, the service of process placed in their hands should be personal.

II. They will be held responsible for the due and regular service of all process entrusted to them for service by themselves and their subordinates, and in each case for the correctness of the statements made in the return.

No peon should be retained for the service of process who cannot read and write, or who is not capable of fully and intelligently carrying out these rules in so far as they relate to actual service.

III. Forms of returns to be made by nazirs are annexed, which should be followed as nearly as the circumstances of the case admit.

IV. In all cases, if the summons or other process is served personally, and the person served signs any acknowledgment of the service, the return shall state that

fact, and refer to the signature of the party signing, thus—
"that the said did at the time of
"such service in the presence of and sign the
"acknowledgment of the service endorsed on the summons
"(or other process) hereto annexed."

V. If the summons or other process was tendered and declined, it will be necessary to show that the contents of the same were brought to the knowledge of the party served.

The return must state
"that the summons (or other process) was tendered and
"returned, and that the defendant or respondent refused to
"receive the same, whereupon
" informed him what the document was,
"and acquainted him with the nature and contents thereof."

FORM No. 1.

Return of service of Summons or Notice on Defendant in person under Section 49 of Act VIII of 1859.

I do hereby certify that I did on the day of deliver (or tendered (*a*) or cause to be delivered or tendered) a copy of the summons hereto annexed under signature of and the seal of the Court [with (if the document is in English and the party to be served be a native) a translation thereof in the language and character] to the defendant (or respondent) (name and describe him by his residence and occupation and caste, and father's name, if known: state facts as to signature, &c.)

(*a*). This word to be used if the summons has been declined.

FORM No. 2.

Return of service of Summons or Notice on Agent under Section 49.

I do hereby certify that I did on the day of deliver (or tender (*a*) or cause to be delivered or tendered) a copy of the summons (or notice) hereto annexed under the signature of the and seal of the Court [with (if the document is in English and the party to be served be a native) a translation thereof in the language and character] to (name and describe him) in person, who is (*b*) an agent of the defendant (or respondent) empowered to accept service of the same [or, if a recognised agent, state how he is so]. (State facts as to signature.)

(*a*.) Ante.

(*b*.) If necessary, "as I am informed and believe."

FORM No. 3.

Return of service of Summons or Notice on a male member of the family under Section 53.

I do hereby certify that as the defendant (or respondent) cannot be found, and has, as far as I am aware, no agent to accept service of summons (or notice), I did on the day of deliver (or tender (*a*) or cause to be delivered or tendered) a copy of the summons (or notice) hereto

(*a*) Ante.

annexed under the signature of the and seal of the Court [with (if the document is in English and the party to be served be a native) a translation thereof in the language and character] to the (state if relation or servant, and his apparent age) of the said defendant residing with him.

FORM No. 4.

Return of service of Summons or Notice under Section 55.

I do hereby certify that as the defendant (or respondent) cannot be found, and there is, as far as I am aware, no agent empowered to accept service of summons, nor any other person on whom the service can be made, I have fixed (or caused to be fixed) a copy of the summons (or notice) hereto annexed under the signature of the and seal of the Court [with (if the document is in English and the party to be served be a native) a translation thereof in the language and character] on the outer door of the house in which the defendant (or respondent) is now residing.

(State whether this is of server's own knowledge, or from information and belief.)

FORM No. 5.

Return of service of Summons or Notice under Section 57.

I do hereby certify that I have, under an order of the Court of the , made under section 57 of Act VIII of 1859, served (or caused to be served) the summons (or notice) hereto annexed by fixing up a copy thereof under the signature of the and seal of the Court [with (if the document is in English and the party to be served be a native) a translation thereof in the language and character] upon a conspicuous place in the court-house of the , and also upon the door of a certain house (describe it) in which, as I was informed and believe, the defendant (or respondent) last resided.

FORM No. 6.

Return of service of Summons or Notice under Section 61.

I do hereby certify that, as the defendant (or respondent) cannot be found, and has, as far as I am aware, no agent empowered to accept service of summons, I did on the day of deliver (or tender (*a*) or cause to be delivered or tendered) a copy of the summons hereto annexed under the signature of the and seal of the Court [with (if the document is in English and the party to be served be a native) a translation thereof in the language and character] to (name and description) who is (or as I am informed and believe is) an agent of the defendant in charge of (state what land or immoveable property) which is the subject-matter of the suit.

(*a*) Ante.

FORM No. 7.

Return of service of Summons or Notice under Section 63.

I do hereby certify that I did on the day of leave a copy of the summons (or notice) under the signature of the and seal of the Court at the registered office of the Company at No. Street [or did deliver (or tender) a copy to Mr. (state what his position is) an officer of the Company.]

Non-appearance of either party. Proceedings ex parte and on default.—(Section 119, *C. P. C.)*

The returns to circular order No. 14, 13th June 1874, having shown that [during 1873] a large number of applications had been made to civil courts under section 119, Civil Procedure Code, and that in many cases the application was successful, there is reason to apprehend that suits are occasionally decided *ex parte* against a defendant without sufficient enquiry as to service of the summons, and that such result may be in some measure due to a feeling on the part of the presiding officer that any hardship may be obviated by an application under section 119. The High Court are therefore pleased to direct particular attention to the subject, and to request that District Judges will have the goodness to satisfy themselves that the provisions of section 111 [absence of defendant] are carried out according to their true intent, *i.e.*, that the court in each case proceed to hear the case *ex parte* only on proof to its satisfaction that the summons has been duly served.

2. The Judges will require the Subordinate Judges and Moonsiffs to report each quarter what number of applications have been made under the section, and how they have been disposed of; and this information will be embodied in the Annual Report, distinguishing between cases falling under section 111 [absence of defendant] and those under 114 [default by plaintiff.]

3. It will be observed that the procedure of section 119 is not applicable to suits dismissed under section 110 [absence of both parties].—(*C. O.*, 1875, *No.* 2, *January* 30*th.*)

Written Statements.—Sections 120, 122, *Civil Procedure Code.*

The Court having found in several cases which have recently come before them that the written statements put in by the parties are not presented on the first hearing of the case, as required by section 120, Act VIII of 1859, but are put in at any time, and not unfrequently take the form of answer and reply, direct me to draw your particular attention to sections 120 and 122 of the Code, and to request that you will impress upon your subordinates and the pleaders and mukhtars in attendance in the court the necessity of a strict adherence to the rules therein laid down.

2. The Court further direct that you will instruct the serishtadar or other officer of your court to prepare a memorandum, to be filed with the records in each case brought up in appeal, showing the date on which the first hearing of the suit was fixed, and the dates on which the written statements of the parties, if any, with the record were filed.—(*C. O.*, 1864, *No.* 14, *May* 12*th.*)

Production and admission of documents.

C. O, 1867, *No.* 9, *February* 26*th*

The High Court find it [1867] absolutely necessary to call the attention of subordinate courts of every grade to the sections of the Code of Civil Procedure applicable to the reception of documentary evidence, the laxity of practice prevailing on this head being productive of most serious inconvenience, and evincing in many cases total disregard of the wholesome provisions of the law.

2. Section 39 provides that "when the plaintiff sues upon any written document, or relies upon any such document as evidence in support of his claim, he shall *produce the same in court* when the plaint is presented, and shall *at the same time deliver a copy* of the document *to be filed with the plaint:* if the document be an entry in a.....book, the plaintiff shall produce the book to the court, together with a *copy of the entry* on which he relies. The court shall forthwith mark the document....., and after examining and comparing the copy with the original shall return the document to the plaintiff. The plaintiff may, if he think proper, deliver the original document to be filed instead of the copy.....; any *document not produced in court* by the plaintiff when the plaint is presented *shall not be received in evidence* on his behalf at the hearing of the suit without the sanction of the court."

This latter part of the section has reference to section 128, which regulates the reception of documents at the first hearing, and is in these words:

"The parties or their pleaders shall bring with them, and have in readiness at the first hearing of the suit, to be produced when called upon by the court, all their documentary evidence of every description which may not already

have been filed in court, and all documents, writings, or other things which may have been specified in any notice which may have been served on them respectively, within a reasonable time before the hearing of the suit; and no documentary evidence of any kind which the parties or any of them may desire to produce shall be received by the court at any subsequent stage of the proceedings, unless good cause be shown to its satisfaction for the non-production thereof at the first hearing."

This hearing, it will be observed, is the defendant's first opportunity (and the last, unless good cause be shown) for production of documentary evidence. It is also an opportunity (and the last, unless good cause be shown) for the plaintiff, *with the sanction of the court*, to produce any documents which he may not have produced in court with his plaint.

3. A plaintiff occasionally has to prove his case, or a defendant to substantiate his defence to a suit, by documents in the possession or power of some other party to the suit, which documents of course cannot be produced by the party whose case they are to serve.

4. When this is the position of the plaintiff, he may, under section 40 (and ordinarily he ought), "at the time of presenting the plaint deliver to the court a description of the document, in order that the defendant may be required to produce the same;" when this is done, the summons (*vide* section 43) is to order the defendant to produce any written document in his possession or power of which the plaintiff demands inspection, or upon which the defendant intends to rely in support of his defence; and where the production of such document is required by a defendant, or when the demand has not been made under sections 40 and 43 on the part of the plaintiff, section 107 provides that "he shall at the earliest opportunity deliver to the court two notices in writing to the party in whose possession or power he believes the document, writing, or other thing to be, calling upon him to produce the same; and one of such notices shall be filed in court, and the other shall be delivered by the court to the nazir or other proper officer to be served upon such party."

When such notices have been served within a reasonable time before the hearing of the suit, the party served is required by section 128 to produce the documents therein specified at the hearing.

5. A party to the suit, or any other person, may also be *summoned* to produce a document (section 155), if necessary, and the court has power, under section 170, to deal with persons, being parties to the suit, who fail to comply with orders to produce documents.

6. It follows from these several sections that documentary evidence is to be produced in open court; that it must be produced at the earliest opportunity, and not afterwards, without the special sanction of the court, or without good cause shown; and that, where the production of such evidence rests with a party other than the party requiring it, the court is bound, on application made to it in reasonable time, to afford its aid in enforcing the production of such evidence, and it is the duty of all Judges to take care, as far as their courts are concerned, that these principles are observed.

7. The attention of the subordinate courts is further called to the mode in which documents (called "exhibits"), including those produced by a plaintiff when his plaint is presented, and which, or copies of which, have been filed with the plaint pursuant to section 39, are to be received and dealt with.

8. By section 129 they are to "be received and inspected by the court, but it shall be competent to the court, after inspection, to reject any exhibit which it may consider irrelevant or otherwise inadmissible, recording the grounds of such rejection."

This means that the court is to take care that parties are not allowed to put in exhibits which are—

(1) irrelevant. or

(2) inadmissible under the Evidence Act.

9. The High Court cannot here lay down what documents ought to be rejected for these reasons, but they may advert to the most frequent violations of rule in this respect. These are generally (1st) the production of decisions and proceedings *inter alios*, and (2nd) the production of copies, or offering secondary evidence of the contents of documents when the originals ought to be produced, or their absence accounted for.

10. If the courts are only resolute in exercising the vigilance which the law requires of them, common sense

will usually prevent any Judge from going far wrong in the admission or rejection of evidence. The inconvenience of which the superior courts have to complain is almost invariably the result of lax procedure by which the courts receive documents, or permit them to be received, sometimes in open court, sometimes by ministerial officers, and at all stages of the proceedings; and sometimes even look upon all exhibits which have been filed with the plaint as if they were evidence in the cause before the court has inspected them, or determined whether they are admissible or not. Such practice, as above shown, is wholly opposed to the letter and spirit of the Procedure Code. But the court should be careful always, as the law requires, to record its reasons for rejecting a document, and it should also make a note of any objection which may have been made to the admission of a document.

11. Next, an exhibit, when received and admitted, is to be endorsed and filed (section 132). It would be of great assistance to the courts of appeal if every Judge, when trying a case in the exercise of original jurisdiction, were to make reference in his notes of the trial to every exhibit which is received and admitted in evidence, referring to it by a distinguishing number. The Court therefore direct that, in addition to the memorandum of the substance of the evidence required by section 172 of Act VIII of 1859, or to the evidence itself, if taken down by the Judge, a note shall be made by the Judge of every exhibit which shall be admitted in evidence, referring to it by a distinguishing number, and of the date on which it was received and the name of the party producing it, and also a note of the rejection of every exhibit which shall be rejected and of the grounds of such rejection.

12. Section 132, it will be observed, repeats the direction contained in section 39, that if the exhibit (or document) be an entry in any shop-book or other book, the party on whose behalf such book is produced shall produce *a copy of the entry*, *which copy shall be endorsed* as aforesaid and be filed as part of the record, *and the book shall be returned* to the party producing it, and the court ought doubtless in these cases, as under section 39, to *mark* the document, *i.e.*, the entry in the book for the purpose of identification before returning it.

It will be observed that the words as to the return of the book are imperative, and the party has not the option

(as under section 39) of delivering the book to be filed instead of the copy of the entry.

13. From inattention to this rule, it has been matter of frequent occurrence for great numbers of account and other books to be received and actually filed in the subordinate courts, and to be afterwards sent up to the appellate courts, to the serious inconvenience of the courts themselves, and probably of the parties, except in those cases where the books have been prepared *pro re nata*, a thing which occasionally happens.

But the inconvenience reaches a climax when the importance of the suit and the determination of the parties bring about an appeal to England. It then becomes *primâ facie* necessary to translate and to print the whole of the contents of these voluminous books and other papers, and the resulting costs are frequently enormous.

14. This Court is occasionally, at very great trouble to itself and to the pleaders engaged, able to apply some check to the evil, but in many instances the check has not been applied, and in consequence the Lords of the Judicial Committee of the Privy Council have in several instances made complaints and observations upon the nature of the evidence sent home from this country.

The answer of this Court on these occasions has been that the evil is one with which the appellate courts can but imperfectly cope, and that the effectual remedy must be applied in the courts of first instance.

And it is very much with a view to obviate these particular complaints, and to remove this just reproach from the procedure of the courts of India, that the present instructions are issued.

15. To avoid, however, any inconvenience which may in some cases arise from the appellate courts having a copy of an entry in a shop-book or other book instead of the original, the Court direct that in any case in which a court of original jurisdiction shall have reason to distrust the original of any such entry from anything which appears on the face of the document, such, for example, as from the entry or part of it being an erasure, or from its being interlined or written with a different colored ink, or the like, the Judge's notes should call attention to the fact, so that the

appellate court may, if it think it necessary, send for the original instead of acting upon the copy.

16. The Court have too much reason to apprehend that in the subordinate tribunals practice is regulated more by daily habit and tradition than by intelligent and careful study of the Code on the part of the Judges themselves, of their ministerial officers, and of the pleaders; and until that study has been fully and conscientiously established, the procedure of the courts will not be what it ought to be, remands and reversals of decisions will be frequent, the course of justice will be impeded, and suitors will be harassed.

17. The Court therefore desire it to be understood that, in issuing directions like the present, they do not wish to give undue prominence to any particular portion of the Code, but simply to remedy errors and inconveniences as they arise, while at the same time they urge upon the subordinate courts the necessity of a perfect familiarity with, and attention to, the Code in every part.—(*C. O.*, 1867, *No.* 9, *February 26th.*)

Lists of documents in each case.

Notwithstanding the instructions contained in [the above] circular order No. 9 of the 26th February 1867, the Court often find it [1869] extremely difficult, and in some cases impossible, to ascertain what documents or exhibits have been actually admitted or relied on by the parties as evidence in the lower courts; and hence there is no security that documents and exhibits may not be used or offered in this Court which have never been admitted in evidence or inspected by the courts below.

2. Whilst, therefore, the Court take this opportunity of calling the particular attention of all subordinate judicial officers to the instructions contained in the circular order above alluded to, and especially to paragraphs 2 and 6 and 7 to 12 of it, they direct that in future, immediately after the conclusion of the trial, the presiding officer shall cause to be prepared two lists, one containing all the exhibits admitted as evidence in the case, numbered with the same numbers as those by which they are respectively distinguished in the

Rejected exhibits, after being endorsed, are returned to the party producing them (section 134, C. P. C), so that the Judge must prepare the list of rejected exhibits from his own notes.

Judge's notes, which should be in numerical order according to their reception; the other containing those that have been rejected as inadmissible, lettered alphabetically in consecutive order, and having a column for remarks, in which should be entered the shortest possible explanation of the reason of their rejection.

3. The lists shall distinguish the exhibits put in or offered on the part of the plaintiff from those put in or offered on the part of the defendant, and shall be signed by the presiding officer, and shall form part of the record.—(*C. O.*, 1869, *No.* 12, *December* 3*rd.*)

Fraudulent stamping of documents after execution.

At the instance of His Honor the Lieutenant-Governor, the High Court desires that in all cases in which the civil courts find any document which comes before them to have been stamped after its execution in contravention of law, they will give a copy of their judgment to the Government Pleader with a view to the prosecution, if necessary, by the Revenue authorities, of the parties concerned in such after-stamping.—(*C. O.*, 1876, *No.* 5, *March* 25*th.*)

Requisitions for records by Courts under Section 138, *C. P. C.*

The Court directs that all records of cases be retained in the record-rooms of the courts to which they pertain, or of the superior court of the district, and that they be not allowed to pass out of the custody of the officers of such courts, except when called for by superior judicial authority, or required for the purposes of section 138, Act VIII of 1859, by a civil court not at the same station.

2. It is improper and inconvenient that records of the courts of justice should be sent to other public officers or functionaries. If a reference to their contents is required, the proper procedure is ordinarily to obtain copies of the requisite papers.

3. The Court desires to point out to Civil Judges of every grade the necessity for exercising careful discretion in acting upon the provisions of section 138 of the Code of Civil Procedure, Act VIII of 1859, which are found to be often abused.—(*C. O.*, 1875, *No.* 15, *December* 16*th.*)

WITNESSES.

Court's Daily Register showing attendance of witnesses.

The High Court is pleased to prescribe for general adoption by all civil courts the annexed form of a diary intended to show the attendance of witnesses.

2. The witness on reporting himself to the nazir or other officer of the court is to be entered forthwith in this book, the columns of which are all to be duly and regularly filled up, and the book is to be signed daily by the Judge, Subordinate Judge, or Moonsiff, presiding in the court.—(*C. O.*, 1873, *No.* 20, *August* 14*th.*)

Diary of Witnesses' Attendance 187

1	2	3		4	5	6	7	8	9
Date of first attendance.	Number of case.	Names of witnesses present.		Date of examination.	Date of discharge.	Further attendance, if any.	Expenses paid (amount).	Receipt of witness or party.	Remarks.
		For plaintiff.	For defendant.						

Examination of witnesses and recording of evidence.—Sec. 172.

(*C. O.*, 1863, *No.* 31, *October* 13*th.*)

By paragraph 47 of the circular order of the late Sudder Court, No. 147, dated July 29th, 1859, the particular attention of the lower courts was called to the rule in section 172 of Act VIII of 1859, and the Judges were directed to take notice of all violations of the rule which should come under their notice. The rule laid down by that section was that the evidence of each witness should be taken down by, or in the presence and under the personal superintendence of,

the Judge; that the court should record such remarks as it might think material respecting the demeanour of the witness while under examination; that in cases in which the evidence should not be taken down in writing by the Judge himself, he should be bound; as the examination of each witness should proceed, to make a memorandum of the substance of what such witness should depose, and that the memorandum should be written and signed by the Judge, and should accompany the record. It was further enacted that if the Judge should be prevented from making a memorandum as required, he should record the reason of his inability to do so.

In several cases which have recently [1863] come before this Court, "pressure of business," "excess of business," &c., have been recorded as reasons for not making a memorandum of the evidence as required by the Act. But pressure or excess of business was never intended by the Legislature to be considered as a sufficient reason or excuse for not complying with the Act. If the Judge attentively listens to the evidence as it is given, and watches the demeanour of the witness, as he is bound to do, and for the neglect of which duty no pressure of business can form an excuse, it will not occupy further time to take a memorandum of the substance of the evidence. In other cases there has been a mere short note stating the result of the evidence of several witnesses together in a few words, the memorandum showing on the face of it that it could not have been made until after all the witnesses of whose evidence the result was given had been examined. Such a memorandum, it is evident, is no compliance with the Act, which requires the memorandum to be written as the examination of each witness proceeds. In another case tried before a late Principal Sudder Ameen, it was represented to the court that the examination of a witness in one case was being taken down whilst the Principal Sudder Ameen was listening to the argument of a vakeel in another case. Such a course of proceeding, if it took place, was a clear violation of the Act, for, when the Legislature directed that the evidence of witnesses should be taken under the personal superintendence of the Judge, it never could have been intended that the Judge should be attending to other business at the same time. These cases are given merely as instances to show how the Act has been [1863] disregarded in many of the civil courts in the mofussil. It is not the wish of the High Court to advert further to the past, but to

express their determination that the provisions of the Act shall be strictly complied with in future.

They therefore direct that, after the promulgation of this order, the following rules shall be strictly observed by the Judges of every grade:—

(1.) Every witness shall be examined *vivâ voce* in open court in the presence of the Judge.

(2.) A Judge shall not be engaged in any other business whilst the examination of a witness is going on, or whilst any documentary evidence is being read.

(3.) If, whilst the examination of a witness is going on, the Judge be compelled to attend to any other business, the examination of the witness shall stop as long as such other business is being attended to.

(4.) The examination of a witness shall not be interrupted for the purpose of enabling the Judge to attend to other business, unless such business be of an urgent nature.

(5.) If the evidence be not taken down by the Judge, he shall make a memorandum in his own handwriting of the substance of what each witness deposes. Such memorandum shall be written legibly in the vernacular language of the Judge, or in English, at the option of the Judge, if he is sufficiently acquainted with that language; and it shall be signed by the Judge and dated, and shall form part of the record, and be always sent up with the record to the appellate court in the event of an appeal.

(6.) *Pressure* of business will form no excuse for not making the memorandum; physical inability (the nature of which shall be recorded) will alone be admitted as an excuse.

(7.) It shall be the duty of every appellate court subordinate to the High Court to examine the memorandum of the evidence made by the Judge of the court of first instance, and to report to the High Court in every case in which, upon the hearing of a regular appeal, it shall appear that the above rules have not been strictly and properly attended to.

(8.) The memorandum made by the Judge of the court of first instance shall in all cases form part of the documents to be sent up to the High Court on special as well as on regular appeals.

(9.) After the examination of witnesses has commenced, the trial should be proceeded with until all the witnesses on both sides have been examined, those of the party upon whom the onus of proof lies being examined first, and then those of the opposite party, and an adjournment of the hearing shall not be allowed except for sufficient cause, which shall be recorded. Particular attention is called to the last paragraph of section 145, Act VIII of 1859, by which it is provided that "if the summons shall have been issued for the final disposal of the suit, and either party shall fail, without sufficient cause, to produce the evidence on which he relies, the court may at once give judgment." The same rule is applicable after a day is fixed for trial. [This paragraph is emphatically reiterated in High Court's C. O., 1865, No. 30, December 7th.]

(10.) Cases may arise in which, from the absence of an important witness which could not be avoided by the party who requires his evidence, it may be necessary to adjourn the hearing. In such cases the evidence of the witnesses in attendance shall be taken, and the witnesses shall not be detained or required to attend again unless for some special reason to be recorded.

(11.) Whenever an adjournment takes place, it shall be for as short a time as possible, regard being had to the circumstances under which the adjournment is granted.

(12.) No adjournment shall be granted in any case, except *vivâ voce* in open court. The day to which the case is adjourned shall in all cases be stated publicly by the Judge in open court, and the reason for the adjournment shall also be stated and recorded.

(13.) A list of all cases adjourned, and the day to which each case is adjourned, shall be affixed in some conspicuous part of the court-house.

(14.) If, after all the witnesses have been examined, the exhibits perused, and the parties heard by themselves or their pleader, the Judge be not prepared to deliver judgment, he may postpone the delivery thereof until a future day, of which due notice must be given, as required by section 183, Act VIII of 1859. The witnesses shall not be detained.

(15.) The whole of the judgment as written in pursuance of sections 184 and 185 of Act VIII of 1859 shall be pronounced *vivâ voce* in open court, either in the language in which it is written, or in the language used in the court.

(16.) The Judge of the court in which the judgment is delivered will be held responsible if the decree be not drawn up in every case within a reasonable time after the delivery of the judgment, or if certified copies thereof be not furnished, pursuant to section 198, Act VIII of 1859, within a reasonable time after application for the same and the production of the necessary stamps.

(17.) The Judge shall make a memorandum on the decree of the date on which he actually signs it, and on the certified copies of the day on which they are furnished.

(18.) The Judge of every court shall sit punctually at the hour appointed.

(19.) A copy of these rules, together with a translation thereof in Bengallee and Urdu, shall be affixed or hung up in some conspicuous part of the court-house in every civil court, and shall be kept so affixed or hung up at all times during the sitting of the court.

(20.) No excuse will be admitted for any wilful or negligent disobedience of the above rules, and the Judge of the district shall report to this Court in every case in which a violation of the same shall come under his notice.

The High Court is satisfied that by a strict compliance with the above rules the administration of justice will be greatly improved. Much irrelevant matter which is now copied over and over again in the depositions of the witnesses in almost the same words will be omitted, the depositions will be shortened, and the record will not be loaded with statements which are wholly irrelevant and inadmissible as evidence.

It will be the duty of the Judge to ascertain by a few questions put to each witness at the proper time whether he is speaking of matters within his own knowledge, or merely of those which he has heard from others; and if the former, what are his means of knowledge.

If any doubt exist as to the admissibility in any particular case of hearsay evidence, the answers will be recorded; and in cases in which it shall appear to the Judge that it is clearly not admissible, the evidence will be rejected and need not be recorded. But, if requested by either party or his pleader, the Judge shall make a note that the evidence,

stating the nature of it, was tendered by the plaintiff or defendant, as the case may be, and that it was rejected, together with the reason for rejecting it. The Judge is expected to give his sole and undivided attention to the evidence as it proceeds, and to discriminate between that which is relevant and legally admissible and that which is not, and to record such remarks respecting the demeanour of each witness while under examination as may be material.

If the Judge entertain a doubt as to the admissibility of the evidence, the safer course will be to admit it, if not objected to by the opposite party or his pleader; and if objected to, to take down the question and answer, and also the objection and the name of the party making it, as required by section 172.

The Judge will be held responsible for the manner in which the evidence is recorded, and for testing the evidence of the witnesses and ascertaining their means of knowledge, and recording whether they are speaking from their own knowledge, or merely from hearsay or report.

Another matter which has attracted the attention of the Court is the manner in which cases are tried.

As a general rule, when once the examination of witnesses has commenced, the trial should be proceeded with until all the witnesses on both sides have been examined, those of the party upon whom the onus of proof lies being examined first, and then those of the opposite party. No fresh case should be taken up intermediately. Cases will doubtless occur in which, from the absence of an important witness or witnesses, or other sufficient cause, it may be necessary to postpone the hearing before all the evidence has been recorded. In such cases the evidence of all the witnesses in attendance should be taken, and the witnesses should not be detained or required to attend again unless for some special reason.

The Judges should bear in mind that when a day has been fixed for the production of evidence and for the final hearing of a suit, and notice has been given pursuant to section 44 of circular order No. 147 of 1859, the hearing should not be adjourned unless upon application and sufficient cause shown by one of the parties. Attention is called to the latter part of section 145, Act VIII of 1859, by which it is enacted "that if the summons shall have been issued for the final disposal of the suit, and either party

shall fail, without sufficient cause, to produce the evidence on which he relies, the court may at once give judgment;" and to the latter part of section 146, which provides that in all cases in which time is given to either party, "the party applying shall pay the costs occasioned by the adjournment, unless the court shall otherwise direct." In all cases in which an adjournment of the hearing takes place after the examination of witnesses has commenced, the adjournment should be for as short a period as possible, regard being had to the circumstances under which it is granted, and the reason for the adjournment should be recorded.

If, after all the witnesses have been examined and the parties or their pleaders have been heard, the Judge be not prepared to give judgment at once, the witnesses should not be detained; but the Judge may postpone the delivery of judgment until a future day, of which due notice should be given, as required by section 183, Act VIII of 1859.

The whole of the judgment, written as required by sections 184 and 185 of Act VIII of 1859, should be delivered *vivâ voce* in open court.

It will be the duty of the Judge to see that the decree is drawn up in every case within a reasonable time after the judgment is delivered. The Judge shall make a memorandum on the decree of the date on which it is actually signed by him.

The Court has reason to believe that some of the Judges do not attend punctually at the hour appointed for the sitting of the court. It should be borne in mind that, independently of all other considerations, such a practice must necessarily cause great inconvenience and delay to suitors and witnesses, and that it is unreasonable that many should be kept waiting for the convenience of one.

The Court wishes it to be understood that the character and merits of a Judge do not depend so much upon the number of suits which he decides, as upon the soundness and accuracy of his decisions; and the Judges of every grade may rest assured that, in reviewing their monthly returns, due allowance will be made by this Court for the time necessarily occupied in the proper and effectual discharge of their duties, and in carrying out strictly the requirements of the Code of Civil Procedure.—(*C. O.*, 1863, *No.* 31, *October* 13*th.*)

Recording evidence in dispossession cases—Section 15, Act XIV of 1859.

An instance having been brought to the notice of the High Court of culpable carelessness and negligence on the part of a Moonsif, in hearing witnesses and recording evidence in cases under section 15, Act XIV of 1859, which misconduct has since led to the removal of the Moonsif from office, the attention of Zillah Judges and Judicial Commissioners is drawn to the necessity of satisfying themselves that evidence is properly recorded in such cases. The Court directs that Judges on their inspection tours will give special attention to the subject, and that they will not omit to notice it in their report.—(*C. O.*, 1871, *No.* 6, *March 17th*)

Commissions for the examination of witnesses.—Section 175, Civil Procedure Code.

The following instructions are laid down for observance by all civil courts subordinate to the High Court when issuing commissions under section 175 of the Code of Civil Procedure (VIII of 1859) for the examination of witnesses resident beyond the jurisdiction of the court issuing the commission, and not within the local jurisdiction of the High Court on its original side.

2. Such commissions ought not generally to be directed to the district courts, the terms of the law requiring that it be issued ordinarily to the court within whose jurisdiction the witness may reside, "and which can most conveniently execute the same." This language clearly points to the courts of first instance with narrow local limits, so that on the one hand the labour of examination may be divided and may not accumulate on the district court, and on the other that the witness may attend the nearest court.

3. The commission should therefore, in ordinary cases, and especially those issuing from Moonsifs' courts, be addressed to the Moonsif within whose jurisdiction the witness resides, by whom, for the above reasons, the evidence can usually be taken more conveniently than by the Subordinate Judge.—(*C. O.*, 1872, *No.* 7, *February 20th.*)

By section 175, Code of Civil Procedure, it is provided that commissions to examine absent witnesses "shall ordinarily be issued to the court within whose jurisdiction the

witness may reside, and which can most conveniently execute the same; but under special circumstances the commission may be issued to any other person or persons whom the court issuing the commission may think proper to appoint."

2. The privilege of obtaining such commissions, in respect of which no fee is at present levied, is largely used, and the duty of acting under such commissions is often a serious addition to the duty of the various Judges.

3. At the same time, the business of the civil courts has almost universally so increased that they ought not to be called upon to perform this additional duty; and notoriously, from their frequent inability to perform it, great delay and inconvenience arise.

4. The High Court is of opinion that this state of things should be held to constitute "special circumstances" under which it is competent to the civil courts to issue commissions to other persons.

5. The High Court considers further that the proper persons to execute such commissions will usually be the pleaders of the district court, or those pleaders of the Moonsif's court who have passed examinations under Act XX of 1865. The court therefore directs that—

I. When such commission is applied for, the court issuing the same shall make choice of some pleader practising in the court within whose jurisdiction the witness resides, and issue the commission accordingly.

II. For the remuneration of the commission so appointed, the court shall require the party applying to pay in a fee of Rs. 4 for each witness to be examined, if the court be that of a Moonsif, or of Rs. 10 for each witness in the case of any higher courts; and the commission shall not issue until such fee be paid.

III. The commission, together with the amount of the fee, shall be sent to the court in which the commissioner is a practising pleader, and the commission shall be immediately delivered to him (unless he refuse to act). If the witness or witnesses appear before him and are examined, so that he can make a return within the time limited, on his returning the commission duly executed the fee shall be paid over to him, otherwise it shall be sent back, together with the commission, to the court which issued it.

IV. Every District Judge shall furnish, on application, to the Judge of any neighbouring district, a list of all pleaders attached to the several courts in his district who are qualified and willing to execute such commissions under these rules.

V. The foregoing rules do not apply to cases coming under section 176, Code of Civil Procedure.

VI. Every subordinate court, including the mofussil Courts of Small Causes, shall furnish to the district court, at the close of each quarter, a return of the commissions which it has issued during such quarter in the form annexed; and the district court shall furnish a general return in the same form to the High Court.—(*C. O.*, 1873, *No.* 10, *May* 31*st.*)

Quarterly Statement of Commissions issued under Section 175, *Code of Civil Procedure, from the Court of District during the Quarter* 187 .

[In tabular form with headings as follow.]

1. Consecutive number for the year. 2. Number of suit. 3. Party applying. 4. Date of application. 5. Place to which commission to be sent. 6. Person to whom addressed. 7. Fee. 8. Date of issue. 9. Date of return. 10. Executed or not. 11. Remarks.

Moonsifs as Commissioners under Sections 180 *and* 181, *Civil Procedure Code.*

C. O., 1872, *No.* 15, *April* 13*th.*

The Court are pleased to direct that whenever Moonsifs are employed as commissioners under sections 180 and 181 of the Code of Civil Procedure, the parties to the suit shall be charged at the rate of Rs. 10 for each day the investigation lasts. All sums so received are to be credited to Government and shown in column 6 of the statement appended to circular order No. 12, dated 8th April 1872. Moonsifs so employed will also be entitled to their travelling expenses either by land or water, which must be calculated and paid in the manner prescribed in paragraph 3 of circular order No. 30 of 10th October 1863.

2. It is not to be understood that the Court contemplate the frequent employment of Moonsifs as commissioners or otherwise than under the special orders of the

District Judge; such work will, as heretofore, be usually performed by Ameens. Occasions may, however, sometimes arise when, by reason of the amount of work already in the hands of the Ameens of a district, or the importance of a particular investigation, the employment of a Moonsif in this way may be thought desirable by the District Judge, and it is to meet such cases that the present circular order is issued.

Forms of Commissions for Examination of witnesses.

(*C. O.*, 1873, *No.* 22, *August* 23*rd.*)

The High Court is pleased to prescribe for general adoption in all the civil courts subject to its control, the accompanying form for commissions issuing under section 175, Act VIII of 1859, for the examination of witnesses.

COMMISSION TO EXAMINE WITNESSES.

IN THE COURT OF THE JUDGE OF DISTRICT

ORIGINAL SUIT (*or* APPEAL) No. OF 18 .

Plaintiff,

versus

Defendant.

To

COMMISSIONER ON BEHALF OF THE

(PLAINTIFF OR DEFENDANT)

Whereas it is necessary to examine the person (*or* persons) named in the margin as a witness (*or* witnesses) on behalf of (the plaintiff or defendant) in the above-mentioned case, you are hereby appointed Commissioner with full power and authority to examine the said witness (*or* witnesses) upon the interrogatories hereunto annexed. And you are further empowered and commanded that you do, at certain days and places to be appointed by you for that purpose, cause the said witness (*or* witnesses) to come before you, and then and there examine him (*or* each of them) upon the said interrogatories, either on his (*or* their respective) oath (*or* oaths) or affirmation (*or* affirmations) secondly specified in the schedule hereunto annexed, to be first taken before you in such solemn manner as is or may be authorized by law. And that you do take such examination (*or* examinations) and reduce the same into writing; and when you shall have so taken and reduced the same into writing as aforesaid, you are to send the same to this Court within days from the date hereof, closed up under your hand and seal, distinctly and plainly set, together with the said interrogatories and this writ. And you are further commanded that, before you act in the swearing or examining the said witness

(*or* witnesses), you do take the oath or affirmation first specified in the schedule hereunto annexed.

Dated this day of in the year one thousand eight hundred and

Seal of the Court.

District Judge.

I.—The Commissioner's oath.

I swear that I will, according to the best of my skill and knowledge, truly, faithfully, and without partiality to any of the parties in this case, take the examinations and depositions of such witness (*or* witnesses) as may be produced before me. So help me God.

The Commissioner's affirmation.

I solemnly declare that I will, according to the best of my skill and knowledge, truly, faithfully, and without partiality to any of the parties in this case, take the examinations and depositions of such witness (*or* witnesses) as may be produced before me.

II.—The Witness's oath.

I swear that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false. So help me God.

The Witness's affirmation.

I solemnly declare that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false.

NOTE.—Christians to whom the oath is administered will be sworn upon the New Testament. To others, oath will be administered upon such symbol, or accompanied by such act, as may be usual, or as the persons taking the oath may acknowledge to be binding on their conscience.

Commissions for verifying petitions and for swearing or affirming affidavits presented to High Court.

(*C. O.*, 1871, *No.* 15, *May* 19*th.*)

To

All Judges, Subordinate Judges, and Moonsifs in the Regulation Provinces, and Judicial Commissioners and Deputy Commissioners in the Non-Regulation Provinces, exercising any of the powers of Judges of Civil Courts.

The High Court has resolved to appoint you to be commissioners for verifying petitions and swearing or affirming affidavits presented to you to be used in the High Court.

A commission for that purpose will accordingly be forwarded with this circular for each of the officers addressed.

In addition to the annexed general rules* for the guidance of all commissioners appointed by this Court to verify petitions, or to swear or affirm affidavits intended for its use, the following special rules are prescribed for your guidance, viz:—

Applications by parties to a suit may be verified in the manner prescribed for plaints.

Affidavits by persons not parties to a suit, when the deponent is a Hindoo or Mahomedan, shall (and in all other cases may) be affirmed in the following form:—

"I solemnly declare in the presence of Almighty God that the signature to this paper is in my name and handwriting, and that what I have therein stated is true."

If the deponent is unable to write, he must say "I have affixed my mark by way of signature to this paper."

BENGAL SECRETARIAT LIBRARY

IN THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

CIVIL JURISDICTION.

Fort William in Bengal. } Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth.

To

GREETING.

WE, confiding in the care, fidelity, and circumspection of you, the said
do by these presents give and grant unto you full power and authority to swear or solemnly affirm, as the case may be, all and every person or persons who shall come before you in your Court, to all and every affidavit or affidavits relating to all and every application or applications for use in our High Court of Judicature at Fort William in Bengal which may be presented in your Court pursuant to circular order No. 15 of the 19th May 1871.

Witness
, Chief Justice at Fort William aforesaid.

Given under the Seal of our said High Court, this day of in the year of Our Lord one thousand eight hundred and

---

* Rules framed on 15th May 1871 for the admission of applications made to the High Court on its appellate side.—(See page 73.)

JUDGMENT AND DECREE.

To be specific and clear.

The attention of the zillah and other subordinate courts is directed to the necessity of strict adherence to the provisions of the Civil Procedure Code in drawing up their decrees.

2. It has frequently come under the observation of the High Court of Judicature that the decrees of mofussil courts are very far from "specifying clearly the relief granted, or other determination of the suit," as prescribed in the 189th section of the Code.

3. Very frequently the court is found to have ordered "that the suit be decreed in favour of the plaintiff, with costs and interest," or "that the plaintiff obtain possession of the property mentioned in the plaint," while the commencement of the decree, instead of containing (as directed) the *particulars of the claim* as stated in the register of the suit, contains merely a vague description of the *nature* of the claim, such as "a claim for possession of lakhiraj land with wasilat," &c.

Clauses 3, 4, and 5, section 26, Act VIII of 1859.

4. And unfortunately the plaint itself in many cases is not as explicit as the law requires it to be, and thus it is occasionally necessary to look at the evidence, or at the written statements, in order to ascertain precisely what was the subject-matter of the suit.

5. It is doubtless for this reason that the inferior courts, when called upon to execute decrees, are in the habit of referring to the records of the original suits; and for this purpose the records are sent backwards and forwards to the great detriment of the papers, and to the serious inconvenience of the appellate court.

6. The High Court therefore desires to impress upon the lower civil courts generally the necessity of drawing up their decrees in such a manner that, in order to the understanding and execution of them, it may not be necessary to refer to any other document or paper whatever.

7. Attentive study of sections 190 to 197 of the Code will in most cases supply the Judges with the precise direction required in framing their decrees; and even where the case does not seem to be expressly provided for, the principles there given will apply.

8. Accuracy in this respect would be very materially promoted if the parties to the suit, and more especially their pleaders, would attend to the preparation of the decrees before they are finally recorded, and see that they contain all requisite particulars, and also that they do not go beyond the judgment.

9. Errors and omissions may be detected by the parties interested which escape the observation of the officers and even of the court, and it is obviously better that such imperfections should be corrected before signature of the decree than upon application weeks, months, or years afterwards.

10. For this reason the Court thinks fit to order and direct that, after the promulgation of these rules, the pleaders on both sides shall be required to affix their signatures to the decrees of the mofussil courts before they are signed by the Judges; and that, where any pleader shall not have signed the decree, the cause of his failing or refusing to sign shall be certified on the decree.

11. The High Court will expect that each Subordinate and Zillah Judge will read and explain this order to the pleaders of his court and to the ministerial officers concerned, and the decrees hereafter emanating from those courts will be scrutinized, and all instances of inattention to the law will be adequately noticed, while on the other hand a careful and intelligent mode of drawing up decrees will be looked upon as a circumstance indicating very plainly the efficiency of the court so distinguished.—(*C. O.*, 1867, *No.* 22, *July* 19*th.*)

Date and Delivery.

(*Section* 185, *C. P. C.*)

It has recently [1873] come to the knowledge of the Court that a Subordinate Judge, now dead, had been accustomed to show as decided, in his monthly and quarterly returns, cases in which no judgment had been delivered, although a decision had been announced and noted in the diary; the judgments in such cases being afterwards prepared and signed as leisure permitted.

2. The Court find it necessary to point out that such a practice is reprehensible, as being not merely opposed to law, but productive of mischief in various ways, and also amounting to a misrepresentation of facts.

3. It is the duty of District Judges to take care that no such practice prevails in the courts under their control, and the means of prevention are simple. The Judge, whenever he inspects an inferior court, should examine the diary, and calling for some of the cases last decided, should satisfy himself that the judgments have been given in correspondence with the diary entries.

4. But the Court believe that where the District Judge's control is perfectly maintained, such irregularities will not occur at all, and that such mechanical check will need only formal observance.—(*C. O.*, 1873, *No.* 13, *June* 19*th.*)

It has been [1864] brought to the notice of the Court that it was the practice in some of the lower courts, and may be so still, for the Judge to pronounce his decision at the close of the trial, but not to write his judgment until several days after, and when he put it in, to give it the date on which the decision was pronounced. This the Court desire me to point out is a practice entirely at variance with the injunction contained in section 185 of the Code of Civil Procedure, which requires the judgment to be dated and signed in open court at the time it is pronounced, and it is from the date on which the written judgment is pronounced and signed that the time allowed for appealing, subject to the conclusion of the period required for obtaining a copy of the decree appealed against, should invariably be reckoned. —(*Extract from C. O.*, 1864, *No.* 31, *October* 3*rd.*)

Authenticated copies to be issued of original not of translations.

(*Section* 184, *C. P. C.*)

The Court is pleased to determine that whenever copies of judgments are produced as exhibits in any suit before any civil court, they shall not be received unless they be authenticated copies of the original judgments. No copy of a translation of a judgment should be received as documentary evidence in any civil suit whenever the original judgment is forthcoming, and copy of that judgment can be obtained.—(*C. O.*, 1865, *No.* 9, *May* 16*th.*)

Frequent instances having occurred where copies of translations, instead of copies of judgments, of the lower courts, "written in the vernacular language of the Judge" (section 184, C. P. C.,) have been filed in this Court with petitions of appeal, all Civil Judges are requested, in complying with applications for copies for the purposes of appeal, to carry out the requirement of the law (section 373, Act VIII of 1859), and furnish copies, and not translations, of their judgments.—(*C. O.*, 1864, *No.* 28, *September 20th.*)

RATE OF INTEREST TO BE DECREED.

Principles in awarding interest.

The Court deem it expedient to point out to all the civil courts subordinate to them that it is not necessary to award by their decrees interest at the uniform rate of 12 per cent. on mesne profits, or other sums payable thereunder, and costs in all cases.

2. The practice of awarding interest at so high a rate is likely to operate as an inducement to judgment creditors, who are often mere assignees of the original plaintiffs, to delay the execution of decrees, and to regard such decrees rather as a desirable investment for money than as a means of obtaining their rights as determined by the judgment of the court.—(*C. O.*, 1870, *No.* 10, *May 12th.*)

The High Court are pleased to publish and commend to the earnest consideration of judicial officers, the following circular issued by the Chief Court of the Punjab.

Dated Lahore, the 18th January 1873.

1. The Chief Court has reason to believe that in many of the courts of this province, especially in those of the agricultural districts, decrees are frequently made by which interest upon debts incurred by peasant proprietors and cultivators is declared payable at exorbitant rates.

2. Cases in which the village money-lender sues his customer involve ordinarily small amounts below Rs. 500, and therefore can scarcely ever come before the Chief Court, in consequence of the provisions of Act XXIII of 1861, section 27, which declares that no special appeal shall lie in cases of the nature cognizable in Small Cause Courts.

3. The Chief Court has in fact had no opportunity of explaining in a judicial decision the general principles which govern this question; while in many parts of the country the subordinate courts, and especially the Small Cause Courts, have, as it appears from a recent inspection of records, decreed interest in a manner far too indiscriminate.

4. The Chief Court regards this with great regret, and considers that the law, as it really stands, requires some explanation for the guidance of judicial officers, in order that it may not be misunderstood to the detriment of debtors of the class above referred to.

5. The second section of Act XXVIII of 1855 *(an Act for the repeal of the usury laws)* declares that, "in any suit in which interest is recoverable, the amount shall be adjudged or decreed by the court at the rate, if any, agreed upon by the parties;" and all due effect must doubtless be given to these words, taken in their plain and ordinary meaning, without any artificial construction being placed upon them for any purpose whatever.

6. The above legislative enactment was formerly enforced in many cases that arose in this province, subject to the qualification declared in paragraph 4, section 19, of the Principles of Law, commonly called the Punjab Civil Code, which contained the following:—"The courts are not bound by any restrictions with regard to usury. Debtors and creditors are allowed to arrange the terms and conditions of interest in whatever manner they may deem most conducive to their mutual benefit; the courts will decree whatever rate may have been agreed upon *bonâ fide* between the parties. If no special rate shall have been agreed upon, then the court will fix what may appear an equitable amount with reference to the custom of the locality, the usage of trade, or the merits of the transaction It will be remembered that the rates of interest vary for different classes and in different places."

* * * * *

"The debtor need not be compelled by the court to pay the entire amount of interest, if there be reason to believe that the bond was executed through fear or ignorance."

7. The compilation from which these words are taken has no force of law in itself, but the general law of contract is, equally with those words, against our courts considering themselves absolved from the responsibility of regarding the circumstances under which an engagement to pay exorbitant interest has been entered into; and omission by the courts to give due weight to such circumstances is likely to give rise to serious injustice, and to such evils as are discussed in the Minute on interest by Mr. Melvill, which has been recently circulated among judicial officers of the province.

8. The Indian Contract Act of 1872, in Chapter II, gives the principles on which the law annexes an enforceable obligation to stated engagements requiring free consent; and in sections 16 and 17, a general and at the same time an equitable rule is indicated, where a person who holds a real or apparent authority over another, or in whom confidence is reposed by that other, obtains an advantage which, but for such confidence or authority, he would not have obtained. The law also points out the results where concealment of facts may have taken place, or acts fitted to deceive, or acts or omissions may have occurred in violation of what is regarded as the legal duty of the person obtaining a promise from another to explain facts "*likely to affect the willingness*" of that other to enter into a contract.

9. Reference may also be made to section 6 of Act IV of 1872 (the Punjab Laws. Act), where it is declared that justice, equity, and good conscience shall be the rule of decision, and it may be safely affirmed that the equity governing this matter is to give their true and full effect to the words of the Indian Contract Act.

10. The repeal of the usury laws by Act XXVIII of 1855, and the abolition of any force of law which the paragraph above quoted from the so-called Punjab Civil Code may have had before the passing of Act IV of 1872, have left untouched the doctrines of equity, both as to the protection of debtors who for any real reason are not fully competent to protect themselves, and as to the power of courts to relieve against what are called unconscionable bargains with such persons.

11. No doubt any one who contracts with another is entitled to assume, *primâ facie*, that the latter is competent to look after his own interests; but no strict rule defines, or can define, where comparative incapacity ceases, and where extreme ignorance and helplessness call for the protection of the equitable rules prescribed by law.

12. No doubt also, as a general rule, the debtor is bound to go or send to his creditor and pay him. In many contracts, however, for the loan of grain for a particular sowing (which indeed may reasonably be for the return of grain after the harvest at a very high rate of interest), where the cultivator fails to make payment after the harvest, a distinction may clearly be taken. Neither party originally contemplates a rate of interest intended only for a particular period, running on from the time of the transaction indefinitely, and in such cases the real intention of the parties, with due regard to the position of the cultivator, must be considered.

13. The existence of undue influence may in many cases be inferred (according to the general rules of equity jurisprudence) from the extreme imprudence of the act done, when coupled with other circumstances; and in this country the relations existing between the professional money-lender and indebted peasant are such that this rule should be borne in mind by our courts.

14. In no case should exorbitant interest be decreed in favour of a money-lender suing a peasant proprietor or cultivator, or any person similarly situated (where the right to recover it is disputed), unless the court trying the case is satisfied that the stated engagement on which the

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contract was a prudent one, not with a view to setting it aside if imprudent, for that of course is entirely beside the court's duty, but with a view to determining whether extreme imprudence, from which, along with other circumstances, the existence of undue influence might be inferred, has or has not been manifested. Reference on this point may be made to the custom of the locality, the usage of parties similarly situated, and the rates for loans prevailing, so that the character of the transaction may be tested.

The debtor need not be compelled by the court to pay the entire amount of interest, whether agreed upon in cash or in grain, if there be reason to believe that the engagement, whether evidenced by bond, or by signing, or marking the money-lender's book, or completed in any other mode, has been entered into through fear or ignorance; and if in any case the amount of interest shall appear to have been agreed upon under circumstances which would render the awarding it

contrary to the principles above referred to, the court will only decree as much interest as may appear just under the circumstances.

15. In conclusion, the Chief Court repeats the injunction conveyed in Book Circular XXIX of 1867, that in awarding interest subsequent to the date of the decree, the courts should not allow it to approach the amount which may be obtainable by persons who have not the security of a decree, and that no inducement should be afforded to decree-holders to allow their decrees to remain unexecuted. Further, the courts are reminded that, where a large portion of the amount decreed consists of interest, it is not compulsory on them to decree interest upon the amount decreed, inasmuch as the courts may fitly exercise the discretion allowed them by Act XXIII of 1861, section 10, and not award any such interest at all.

2. Many cases have come to the knowledge of the Court in which interest has been decreed at the most oppressive rates without regard to the circumstances under which the loan was contracted.

3. The courts in this way become instruments for the registering of usurious transactions, and the money-lender adds to exorbitant terms the security of a decree.

4. The object of the Court in drawing attention to this subject is not to assist debtors in evading the consequences of engagements voluntarily and intelligently contracted, but to give the protection of the courts of justice to persons who, from distress, ignorance, or habits of submission, have not been truly free agents in the contracts set up.

5. Particular attention is directed to the last paragraph of the Punjab circular.—(*C. O.* 1873, *No.* 8, *April 30th.*)

ATTACHMENT.

All orders by all civil courts for the attachment of estates and shares of estates shall be immediately notified to the Collector of the district within which such estates or shares of estates are situated.—(*C. O.*, 1871, *No.* 2, *January 10th.*)

The attention of Judges of every grade is drawn to [the above] circular order No. 2, dated 10th January 1871, requiring orders of attachment to be notified to the Collector of the district in which the attached estate or share of estate is situated, and they are requested to observe that the notification is to be made in every case, without exception, in which such property is attached in execution of a civil court's decree. The above notification does not, however, supersede the written order which is required by section 239, Civil Procedure Code, to be fixed up in the office of the Collector when land or any interest in land is attached.

2. The High Court is also pleased to direct that whenever attachment is legally and formally withdrawn, such

withdrawal shall in like manner be notified to the Collector in all cases of the same description.—(*C. O.*, 1876, *No.* 3, *February 8th.*)

When any civil court attaches landed property paying revenue to Government and appoints a manager under section 243, Act VIII of 1859, information of the fact should be always given to the Collector without delay.—(*C. O.*, 1870, *No.* 9, *May 12th.*)

MANAGEMENT OF ATTACHED PROPERTY.

(*Sec.* 243, *C. P. C.*)

The High Court having recently [1871] had under consideration a number of cases in which it plainly appeared that the provisions of section 243 of the Code of Civil Procedure had been abused, thinks it proper to call the attention of the civil courts generally to the purpose for which that section was intended, and to prescribe certain rules for the better carrying out of that purpose.

2. By section 243, Act VIII of 1859, it is enacted that "when the *property attached* shall consist of debts due . . . . . or of lands, houses, or other immoveable property, it shall be competent to the court to appoint a manager of the said property," &c., &c.

3. The power to appoint a manager is consequently given to the courts in respect of property belonging to the party liable under the decree which the execution creditor *may have attached* with a view to sale; and section 243 has no application whatever, except to property which is *actually under attachment.*

4. It is plain that what the legislature intended by this and some analogous provisions of the Code was to prevent needless sacrifice of the judgment-debtor's property by a forced sale, and at the same time to provide for the satisfaction, within a reasonable time, of the creditor's claims.

5. The late Sudder Court, in paragraph 54 of their circular order dated 29th July 1859, directed that care should be taken not to exercise the power given by sections 243 and 244 "so as to inflict an injury on the decree-holder."

6. While, therefore, a judicious use of the power conferred by the section may be extremely beneficial to the judgment-debtor, without unduly postponing the creditor's remedies, an order placing property under management, which does not provide for a timely liquidation of the debt, is an unjustifiable wrong upon the creditor, and benefits no one except the manager.

7. An essential element in such arrangements, moreover, is the economical administration of the property.

8. The appointment of a manager who is too highly paid in proportion to the value of the property, or who is wanting in the proper qualifications, withdraws an undue amount of the assets from the purpose for which they were attached, or endangers the full realization of those assets.

9. It is further to be borne in mind that an order made under section 243 concerns only the particular attaching creditor or creditors who may have been before the court at the time when the order was made, and will not affect the rights of other creditors to attach the same property. Should a second attaching creditor apply for an order for sale, the existence of an order appointing a manager seems to afford no valid reason for refusing the application. Indeed, it may well be that an arrangement which was right and reasonable in view of the liabilities of the judgment-debtor which were before the court when the order appointing a manager was made, would be unreasonable with reference to the rights of other creditors seeking to enforce demands under decrees against the same debtor, whose remedies might be indefinitely postponed, while the first attaching creditor might be getting payment in such a manner as to suit his own convenience and the interest of the debtor.

10. The following rules are to be observed henceforward in all cases where it is proposed to place under management the immoveable property of judgment-debtors which is already under attachment:—

I. The judgment-debtor is to be strictly examined touching the profits and out-goings, such as Government revenue, putni rent, or the like, the cost of management, and the existing condition of the property.

II. The execution creditor or his pleader is to be asked by the court whether he consents or objects to the

arrangement proposed; and such consent or objection, with the grounds, if any, of objection, is to be recorded.

III. If the creditor object, and the objection be overruled, the court is to record, in the handwriting of the Judge, an order setting forth its reasons for placing the property under management, the amount of the debt, the profits or income of the property, and the period within which, by estimate, the debt will be liquidated. Such period in ordinary cases ought not to exceed two or three years. When the order is made by consent, it will only be necessary to record the last-mentioned particulars.

IV. The court should then proceed to appoint a manager, with such establishment (if any) as may be necessary, with such remuneration as it may think proper. The expenses of management, however, should not, except under very special circumstances, exceed 10 per cent. of the gross collections or profits; and security should be required not less in amount than half the yearly collections.

V. Notice of the intention to appoint a manager should be given at the court-house and on the property at least 15 days beforehand, and candidates for the office should be invited.

VI. No person should be appointed manager (unless with the approval of the District Judge) who cannot read the language in which the accounts of the property are kept and the ryots' engagements are written, or who cannot give the security required by the court.

VII. Whenever property is placed under management, or a manager is appointed, if the court making the appointment be not the district court, the order and the appointment should be reported to the Judge of the district court, who, if he disapprove thereof, may signify such disapproval to the court making such order or appointment; and if such court shall not satisfy the District Judge thereupon, the Judge should report the matter for the information of the High Court.

VIII. Whenever application is made by subsequent or other judgment-creditors for the attachment and sale of property already under management, the court should call upon the judgment-debtor to show cause why such property should not be sold, and to give notice of such application to all previous attaching creditors; and unless it can be

shown that, regard being had to all execution claims upon the property, or against the judgment-debtor, the management can still be properly continued, such property ought then to be brought to sale, the earliest attaching creditor being of course entitled to the benefit of section 270.

IX. Any execution creditor who has attached the property under management may at any time apply to the court to put an end to the management, and such application should be duly considered.—(*C. O.*, 1871, *No.* 19, *July 11th.*)

EXECUTION.

Execution cases when, and under what circumstances, to be struck off the file. When to be revived.

The practice of keeping on the file cases in which the decree-holder has neglected to proceed in the execution, and in which his endeavours to point out property of the debtor have proved fruitless, is inconvenient and unnecessary. The Court therefore desire that whenever the decree-holder fails for a period of six weeks to carry on the execution, or when the whole of the property pointed out by the decree-holder has been either sold or released from attachment in consequence of claimants proving their right thereto, the case should be struck off the file. In the event of a fresh application being made by the decree-holder, or his pointing out fresh property, the case will be brought on the file as a new revived case of execution.—(*C. O*, 1834, *No.* 127, *December 12th.*)

Execution of a decree out of the jurisdiction of the Court by which it was passed.

The High Court having become aware of the existence of a diversity of practice in different districts in regard to the transmission of copies of decrees and certificates under section 286 of the Code of Civil Procedure—some judicial officers franking the envelopes on the public service, whilst others send them post paid—are pleased to direct that the practice, wherever it may prevail, of forwarding such communications *on the public service* be forthwith discontinued. Whenever a court in one district may transmit a certificate and decree for execution in a subordinate court of another

district, the transmitting court shall require from the party desiring its assistance stamps sufficient, not only for paying the postage to the chief civil court of the district, but also for forwarding the envelope to the subordinate court in which the decree is to be executed, and shall enclose these last in the letter giving cover to the certificate and decree.

2. Under this ruling the transmission of civil processes to the Sheriff of this Court on its original side, as well as the return of such process after service, must no longer be effected at the public expense. All Civil Judges are accordingly requested, when sending notices or summonses to the Sheriff, to send them "post paid," and to provide that officer at the same time with a sufficiency of postage stamps to enable him to return those processes, after service, to the court from which they issued.—(*C. O.*, 1865, *No.* 20, *September 4th.*)

EXECUTION OF DECREES IN NATIVE STATES.

(*C. O.*, 1869, *No.* 4, *December 8th.*)

Forwards for the guidance of all Civil Judges, as well as for the information of such persons as may have decrees of their courts to be enforced in foreign territories, the following copy of a Resolution of the Governor-General in Council:—

Extract from the Proceedings of the Government of India in the Foreign Department (Judicial), under date Simla, the 27th August 1868.

RESOLUTION.—His Excellency the Viceroy and Governor-General in Council observes that the object aimed at by the Resolution of the 31st of January 1867, which was forwarded to all Governments, Administrations, Departments, and Agencies, was to give facilities for the execution of the decrees of civil tribunals obtained by British subjects in our own territory, by enlisting the influence of the several political authorities with the Princes and the Chiefs of Native States to which the debtor had absconded, or in which he was possessed of property.

2. It then appeared that several political officers objected to the Resolution in question, and the subject again

came under the consideration of the Government on the 10th of April 1867.

3. On that occasion the Governor-General in Council explained the broad principle under which the decrees of courts of one nation or country are recognized by the courts of another country, and the Government declared its opinion that there was no reason why this just and equitable principle should not be recognized in India. The Governor-General in Council next proceeded to modify and explain the Resolution of the 31st of January preceding, by proposing more specific rules for the guidance of the political authorities, and by inviting their opinions on this important question. The rules, it may be stated, comprised the following provisions:—

I.—Where there were regular courts in Native States, the holder of a decree obtained from a British tribunal was himself to apply to such native courts for the execution of his decree.

II.—Where there were no regular courts, the decree-holder was to bring the decree to the notice of the native ruler, through the political representative of the British Government, who was to recommend to the Native Chief or Prince that effect should be given to the decree in whatever way the system of administering justice in such State would permit.

III.—The practice of reciprocity in execution of decrees between our own and native tribunals was, if possible, to be adopted.

4. The replies to the circular above-mentioned of the 10th of April, inviting opinions and suggestions, have been received and have been fully considered by the Government of India in Council.

5. The opinions of the experienced officers consulted on this question differ considerably, both as to the propriety of issuing the proposed instructions, and as to the possibility of attaining the end which the Government had in contemplation.

6. The Governor-General in Council sees no reason whatever to question the soundness and equity of the principle laid down in a circular of the 10th April 1867, nor does he cease to hope that in process of time regular tribunals may gradually be established in all important Native States, which shall eventually secure the confidence of suitors, which shall be reliable instruments for the execution of the decrees of British tribunals, and which in their turn shall deliver decrees, such as would in ordinary cases be respected by our own Judges.

7. But looking to the weighty objections urged by several able and experienced officers to the adoption of the second provision of the circular in question, to the inexpediency of subjecting Native Princes and Chiefs to the constant official pressure of the British representatives, to the irritation and complications to which such a course might possibly give rise, and to the probability that, in the end, the legitimate influence of high civil or military officers may be weakened or diverted from its proper scope, the Government of India is not prepared to insist on carrying out the instructions which it had previously contemplated in the interest of honest and successful suitors. In future, then, all administrations and political representatives of the British Government will be guided solely by the following instructions.

8. The rule contemplated for cases and states where regular tribunals exist will still be maintained. Holders of decrees obtained in British tribunals must present them themselves, or by their lawfully constituted agents, for execution before such tribunals, without in any way invoking the aid or relying on the influence of the British representative. The question of reciprocity in the execution of decrees is one which the tribunals of the respective Governments must decide.

9. Where there are no regular tribunals, the political representative will, as a general rule, abstain from putting any pressure on, or using his influence with, the Chief or the Durbar in order to the execution of a decree obtained in British territory.

10. Nor ought this determination to inflict any real hardship on claimants who successfully have resorted to our courts for redress.

11. In many cases where large sums of money are claimed from debtors resident in British territory, such persons, if they abscond into Native States, leave either property or partners behind them in the said British territory, against whom execution may at once be taken out; and in all cases where plaintiffs apprehend that a defaulting debtor may abscond, or may convey away his property, the provisions of Act VIII of 1859, regarding the attachment of property while a suit is pending, afford to all litigants who are properly alive to their rights and position during litigation a fair and adequate security against eventual loss by evasion or default.

12. There may occur, however, the Governor-General in Council observes, some flagrant cases in which a defaulting

and absconding debtor possesses large means within the limits of native territories in which the default and evasion may be marked by acts of gross fraud and flagrant dishonesty, and in which, by deceit or artifice, he may have reduced the honest creditor to ruin, or have left him without the slightest prospect of redress; and there may be other peculiar circumstances which, in the judgment of the political officer, might render interposition on his part expedient.

13. In such cases the representative of the British power may, when applied to, most properly use his discretion in pointing out to the Chief and the Durbar the special circumstances which render intervention desirable, and may urge them to compel the defaulter to discharge his liabilities. In cases of remarkable difficulty or doubt, the political authority may, if he thinks fit, refer the matter to Government for orders before taking any action.

14. But it must be clearly understood that these cases will form the exception, and not the rule, and that the political authority will only adopt this course when he is fully satisfied that the case is distinguished by exceptional circumstances, and that the claimant has been the victim of fraud and trickery, and has, practically, no other means of obtaining his rights.

15. In such marked cases the Governor-General in Council does not doubt that the moral influence and advice of the British official may be properly exerted, and that the Durbar will recognize the propriety of insisting that the evading debtor shall come to some satisfactory arrangement with his creditors.

16. The resolution of the 31st of January is hereby cancelled, and all officers will henceforth be guided by the principles as above laid down.

Sales in execution of decrees.

In order to the better arrangement of business and the obtaining of better sales when property is sold by civil courts in execution of decree, the Court is pleased to direct that every District Judge shall appoint a certain fixed day in each month on which, at an hour to be named, all sales of immoveable property in execution of decrees in his own court and in the inferior courts at the sudder station shall be held. No sale of immoveable property shall take place except on such fixed date, or on the next open day (to which

any sale not completed on the said fixed date may be adjourned). The notification of sale prescribed by section 249, Code of Civil Procedure, shall be worded in accordance herewith, and the District Judge shall cause to be published in all courts at the sudder station and at the Collector's office, not less than 14 days before the date of sale, a list of such property to be sold.

2. The sale shall commence at the hour appointed, and in some suitable part of the court-house, and the lots shall be sold strictly according to such list *by the nazir of the district court.* The sales are to be conducted in a business-like way, *without undue haste*, but not to be unduly protracted.

3. The Judge shall also fix, on the report of the Moonsifs who are not stationed at head-quarters, a certain day or days for the sale of immoveable property, under similar conditions, at the court of each Moonsiff, and the sales shall take place in each court as above directed *mutatis mutandis.*

4. When the sale day in any case falls on a Sunday or other close holiday, the sale shall take place on the first open day thereafter.—(*C. O.*, 1873, *No.* 21, *August* 18*th.*)

In modification of the provisions made by circular order No. 21, dated 18th August 1873, for the sale of immoveable property in execution of decrees, it is hereby provided that, as regards under-tenures and properties of little extent and value, the judgment-debtor shall have the option of requiring that property of that description should be put up for sale on the spot.—(*C. O.*, 1875, *No.* 17, *December* 17*th.*)

[All District Judges and Judicial Commissioners are requested to report, for the information of the Court, how the above rules, laid down in circular order No. 21, dated 18th August 1873, have worked, both as regards the obtaining of better sales and in the way of preventing abuses, in respect more particularly of the smaller holdings sold in execution; and whether in such cases complaint has been made.—(*C. M.*, 1875, *No.* 8, *April* 28*th.*)]

PAUPER SUITS.

Levy of Government dues.

It having been brought to the notice of the High Court [1864] that the monthly returns enjoined in the circulars of the late Sudder Court are "frequently delayed for a very considerable period," and that the recovery of the Government dues on account of stamp fees in pauper suits is rendered almost impossible by the delay in informing the

Collector of the decisions of the civil courts in such suits, the following instructions are issued for the guidance of Zillah Judges, who will also enforce their observance upon the subordinate courts.

2. The civil court which decides a pauper suit is required by section 309, Act VIII of 1859, to calculate the amount of stamps which would have been paid by the plaintiff if he had not been permitted to sue as a pauper, and such amount is declared to be recoverable by Government from any party ordered by the decree to pay the same. The Court desire that whenever a decision is passed in favour of a person suing *in formâ pauperis*, the Judge deciding will *immediately* intimate the fact to the Collector of the district, and inform him simultaneously of the *amount* of stamp fees determined under the law above cited, as well as the *names* of the parties by whom the amount is decreed to be payable, and such other particulars relative to the parties, viz. place of abode, occupation, &c., as will enable the Collector to recover the dues of Government.

3. In cases in which the amount decreed is paid into court, the Judge should deduct whatever sum is due from the judgment-creditor as stamp fees under section 309, Code of Civil Procedure. When any such sum is deducted from the amount decreed, information should be given to the Collector, with a view to his making an application to have it made over to him for the purpose of being duly credited to Government.—(*C. O.*, 1864, *No.* 34, *November* 30*th.*)

Expenses of Witnesses in Pauper Suits.

In regard to the expenses of witnesses whose attendance is required on behalf of pauper plaintiffs, states that, as section 308 of the Code only exempts paupers from the payment of the stamp duty, a suit instituted by a pauper must proceed in all other respects as any other case. The expenses of witnesses must therefore be borne by the pauper.—(*C. O.*, 1862, *No.* 200, *March* 24*th.*)

APPEALS.

Reckoning of the period for appeal.—Copies.—Time for copying.

(*Section* 333, *Civil Procedure Code.*)—*C. O.*, 1864, *No.* 31, *October* 3*rd.*

The High Court having had before them instances of the abuse of the provision made by section 333 of Act VIII of 1859 which prescribes the period within which an appeal

is to be preferred,* and the mode in which that period is to be calculated, desire me to request your strict attention to paragraph 58 of the circular of the late Sudder Court of the 29th July 1859, No. 23, which, for facility of reference, is transcribed in the margin.

58.—"Section 333 directs that the "period allowed for appeals shall be "reckoned exclusive of the time re- "quisite for obtaining a copy of the "decree appealed against. In grant- "ing copies of decrees, therefore, the "lower courts will be careful to en- "dorse on them the date of applica- "tion for copies and the date when "such copies were ready for delivery "to the appellant. When the re- "quisite stamps are not filed with "the petition, the date of application "must be considered to be that on "which the stamps were filed, and "the mohurrirs were enabled to com- "mence the preparation of the copies. "The endorsement, therefore, must "always state on what date the stamp "papers were deposited. The appel- "late court should be careful to "notice any delay in furnishing these "copies."

2. It is evident from instances before the Court that longer time than contemplated by law for obtaining copies of judgment occurs. The delay is in some cases attributable entirely to the parties who, in order to gain more time for filing an appeal, purposely fail to put in the requisite quantity of stamp paper to enable the court to prepare the copy of the judgment asked for, and they supply the deficiency by putting in other sheets of stamp paper from time to time. To remedy this objectionable practice, the Court directs *that the time allowed for obtaining a copy shall not begin to count till the whole of the requisite pieces of stamp paper for the copy are put in.*

Accordingly the date on which the stamp papers were deposited, requiring to be endorsed on the copy granted, shall be understood to signify the date on which the last piece was deposited.

3. The delay is sometimes caused by the non-translation of English judgments in proper time, copies of which are required by the parties to enable them to draw up their petition of appeal. It should be considered a part of the duty of the translators attached to each court to prepare these translations with as little delay as possible, and the Judges are requested to see that this branch of their duty is properly performed by their translators.

4. Translators were not originally entertained for this purpose, their duty having been to translate the pleadings which, under the old procedure, were very voluminous: now, however, they have little or nothing to do in that way, and their services ought therefore to be employed in making the vernacular translations of the judgments, and they should be made to

* Now Section 13, Act IX, 1871, and Articles 151 and 154 of Schedule II.

understand that this is now the most important part of their duty. The Judge, on his part, should examine, sign, and date the translations on the day on which he certifies it as correct.—(*C.O.*, 1864, *No.* 31, *October* 3*rd.*)

APPEALS.

Certificate from Pleader.

It having come to the knowledge of the [High] Court that memoranda of appeals are frequently filed in the lower appellate courts bearing the endorsement of pleaders who, when the appeal comes on for hearing, betray a more or less complete want of acquaintance with the case, and even with the grounds of appeal, to the loss of public time, the detriment of suitors, and the utter neglect of their professional duty, the Court lays down the following rules, to which the sanction of the Governor-General in Council has been obtained, for the guidance of subordinate courts in the admission of appeals.—(*C. O.*, 1871, *No.* 17, *May* 23*rd.*)

Rules for the guidance of Subordinate Appellate Courts in the admission of appeals,—rules made by the High Court and sanctioned by the Governor-General in Council under Section 15 *of* 24 *and* 25 *Victoria, Cap.* 104.

1. All petitions of appeal in the subordinate appellate courts shall be presented in open court either by the party in person or his "recognized" agent, within the meaning of that term in section 17, Code of Civil Procedure, or by a pleader.

2. In every case in which the petition is presented by a pleader, the grounds of appeal shall be drawn and signed by a pleader, who, at the foot of the petition of appeal, shall subscribe the following statement:—

"I certify that I have examined the record in this case, and that, in my opinion, there are good grounds, as above set forth, for this appeal; and, having prepared it, I undertake to appear and support the appeal before the appellate court."

3. In every case in which the petition of appeal is presented by the party in person, or by a recognized agent, and a pleader is afterwards retained by such party to support his appeal, the pleader, before being allowed to appear to support

the 'appeal,' shall subscribe and file in court the following statement, which shall be annexed to the petition of appeal :—

"I certify that I have examined the record and the grounds of appeal in this case, and that, in my opinion, the grounds of appeal are good, and I undertake to appear and support them before the appellate court."

[I am directed to request that you will be so good as to favour the Court with your views as to how far the rules laid down by [the above] circular order No. 17, dated 23rd May 1871, with regard to certifying appeals filed in the lower appellate courts, have been successful in checking the abuse against which they were directed; how they have been carried out, and whether you can suggest any desirable modification of them.—(*C. M.*, 1872, *No.* 14, *December* 13*th.*)]

In order that there may be as little impediment as possible to the carrying out of the rules promulgated with C. O. No. 17, dated 23rd May last, the Court propose to give further directions touching the transmission of records to the district court, or to the court in which, by any order made under section 22, Act VI of 1871, appeals from the decisions of any Moonsif may be preferred.

2. The Court therefore desire that you will have the goodness to report, at your earliest convenience, within what period, and at what intervals, it will be practicable to require the transmission of Moonsifs' records and of the records of Subordinate Judges at out-stations to the several appellate courts in your district.

3. It is extremely desirable that the period of transmission should in no case exceed fifteen days.—(*C. M.*, 1871, *No.* 5, *September* 11*th.*)

Memorandum of appeal to be recapitulated in appellate decree.

The High Court having observed in several cases which have recently come before them that the decree of the subordinate appellate court has not contained the memorandum of appeal, and much inconvenience being found to result from the omission, the attention of the Zillah Judges and Subordinate Judges is directed to the provisions of section 360 of the Civil Procedure Code, which require that the memorandum should be embodied in the decree; and to the terms of section 334, which points out what the memorandum itself must contain.

2. It is not enough, the Judges will observe, to set out the first ground of appeal before them followed by the words "et cætera," but all the grounds of appeal must be stated *seriatim*, so that the High Court may know, when the judgment on appeal comes before them, upon what grounds the appeal was preferred to the lower appellate court.—(*C. O.*, 1867, *No.* 4, *January* 16*th.*)

Appellate Court's decisions to be communicated to court of first instance.

The High Court are pleased to order that, for the future, whenever the order of a court of first instance may be modified or reversed on appeal, or whenever any irregularity in the proceedings of such court may be made the subject of argument by the pleaders, and of comment by the court of appeal, a copy, or a translation of the judgment, if it has been recorded in a language not intelligible to the Subordinate Judge, be forwarded for the information and future guidance of such officer.

2. The High Court trust that, by this means, the judgments of the lower courts may be improved, and the work of the appellate courts may in consequence be diminished.

3. Judges of districts are requested to communicate these orders to their Subordinate Judges.—(*C. O.*, 1866 *No.* 16, *April 25th.*)

Judgment in extenso, and not mere decretal order, to be communicated to court of first instance.

It having been brought to the notice of the Court that in some districts the appellate courts do not transmit to the lower courts copies of the judgments passed by them in appeal, the Court are pleased to direct that, as a general rule, for the purposes of section 361 of the Civil Procedure Code, the term "decree" shall be taken to include the judgment, and to desire that in all cases of appeal the appellate court will transmit to the lower court a copy of the judgment passed, as well as of the decree. It is right and very desirable that the lower court, especially if its decision be reversed or modified, should have an opportunity of seeing the judgment of the appellate court.—(*C. O.*, 1874, *No.* 9, *March 7th.*)

Remand orders by Mofussil Appellate Courts.—Sections 351 *and* 352, *C. P. C.*

C. O., 1866, *No.* 36, *September* 12*th*

The number of cases exhibited in the periodical statements as having been remanded by the lower appellate courts leads the High Court to doubt whether sufficient regard is commonly had to the provisions of sections 351 and

352 of the Civil Procedure Code. The Court therefore direct me to bring to your notice that by section 351 a remand may be ordered when the lower court has disposed of the case on some preliminary point, *so as to exclude any evidence of fact* which shall appear to the appellate court essential to the rights of the parties, and the decision of the lower court upon such preliminary point has been reversed in appeal; and also that by section 352 it is not competent to the appellate court to remand a case for a second decision by the lower court, except as provided in the last preceding section, that is, unless the case has been decided on a preliminary point which has been reversed, and *that* decision has excluded any evidence of fact which is necessary to the full elucidation of the rights of the parties in the suit.

2. The High Court also has reason to believe that in many instances the lower appellate courts remand cases decided below on a preliminary point, or on erroneous grounds, even when the evidence upon the record is sufficient to enable the appellate court to pronounce a satisfactory judgment in the case. This course of procedure, I am to remark, is opposed to section 353 of the Code of Civil Procedure. Again, cases are frequently remanded when the lower court has omitted to raise or try any issue, or to determine any question of fact which, in the opinion of the appellate court, is essential to the right determination of the suit on its merits, and the record is not sufficient to enable the appellate court to determine such issue on questions of fact. Such remands, I am directed to observe, are not warranted by law. In such cases appellate courts are competent, under section 354, to frame an issue or issues, and to refer them to the lower court for trial. The lower court is thereupon to proceed to try such issue or issues, and to return to the appellate court its finding, together with the evidence.

3. If further evidence, in the shape of a report of an Ameen, or of any other nature, be required by the appellate court, the case should not be remanded for that purpose; but under sections 355 and 356 the appellate court should either require the lower court to order the preparation of such reports, or take the evidence required and transmit it to the appellate court; or should take the evidence, if it can be so taken, before itself, the appellate court being careful always to record the reasons for the admission of additional evidence.

4. The Court direct very particular attention to these instructions.—(*Vide C. O.*, 1876, *No.* 10, *June 5th.*)

A Subordinate Judge, as an Appellate Court, is not to require by remand order a local investigation by a Moonsif as a Commissioner to the Appellate Court.

Several instances having been brought to the Court's notice in which a Principal Sudder Ameen (Subordinate Judge) trying a case in appeal from a Moonsif's decision, directed the Moonsif, by an order of remand, to make a local investigation in person, the Court think it necessary to point out that it is not competent to a Subordinate Judge to issue such an order to the Judge of an inferior court of original jurisdiction, or to impose upon such inferior Judge the duties of a Commissioner under the Code of Civil Procedure.

Such interruption of the duties of an inferior court is an interference with the arrangements of Government and with the convenience of the public, which is not warranted by law, or justifiable in point of propriety.—(*C. O.*, 1868, *No.* 8, *July* 3*rd.*)

Rules framed on 15*th May* 1871 *for the admission of applications made to the High Court on its Appellate Side.*

I.—No application made to the High Court, founded on any statement of fact, shall be made otherwise than by a petition in writing, setting out the material facts, matters, and circumstances on which the applicant relies.

II.—The facts stated in such petition shall be verified by the solemn affirmation of the petitioner, or by an affidavit to be annexed to the petition.

NOTE.—The affidavit may be by any person having cognizance of the facts stated. Several persons may join in an affidavit, each deposing separately to those facts which are within his own knowledge.

III.—Any party opposing the grant of an application, or showing cause against a rule, who may desire to bring before the court any facts not contained in, or admitted by, the petition or affidavit of the opposite party, must do so by an affidavit containing, in the form of a narrative, the material facts on which he relies.

IV.—Every affidavit to be used in the High Court shall be entitled "In the High Court of Judicature at Fort William in Bengal."

If there be a cause in court, the affidavit in support of, or in opposition to, an application respecting it, or made in it, must also be entitled in the cause.

If there be no cause in court, the affidavit shall be entitled "In the matter of the petition of "

V.—Every such petition or affidavit as aforesaid, containing any statement of facts, shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject.

VI.—Every person, other than a plantiff or defendant in a suit in which the application is made, presenting any petition, or making any affidavit, shall be described in such a manner as will serve to identify him clearly, that is to say, by the statement of his full name, the name of his father, his caste or religious persuasion (if he be not a Hindoo), his rank or degree in life, his profession or trade, and the true place of his residence.

VII.—When the petitioner in any such petition, or the deponent in any affidavit, speaks to any fact within his own knowledge, he must do so directly and positively, using the words "I affirm" (or "make oath") "and *say*."

VIII.—Where the particular fact is not within the deponent's own knowledge, but is stated from information obtained from others, the petitioner or deponent must use the expression "I am informed," and, if such be the case, he should add, "and verily believe it to be true," or he may state the source from which he received such information. When the application rests on facts disclosed in documents or copies of documents procured from any court of justice or other source, the deponent shall state what is the source from which they were procured, and his information or belief as to the truth of the facts disclosed in such documents.

IX.—Every person presenting a petition or making an affidavit shall, if not personally known to the person before whom the petition is to be verified or the affidavit is to be made, be identified to that person by some one known to him; and the person before whom the petition is verified or the affidavit is made shall specify at the foot of the petition or of the affidavit (as the case may be) the name and description of him by whom the identification is made, as well as the time and place of the identification and of the verification of the petition or making of the affidavit.

X.—If any person presenting a petition or making an affidavit shall appear to the person before whom the petition is to be verified or the affidavit made to be illiterate, or not fully to understand the contents of the petition or affidavit,

the said person before whom the petition is to be verified or the affidavit made shall cause the petition or affidavit (as the case may be) to be read and explained, either by himself, or in his presence by a proper officer of the court, to the person by whom it is to be verified or made. When any petition or affidavit is read and explained as herein provided, the person before whom the petition is verified or affidavit is made shall certify in writing, at the foot of such petition or affidavit, that it has been so read or explained, and that the person verifying the petition or making the affidavit seemed perfectly to understand the same at the time of his verifying it or making it.

Records to be despatched within seven days after receipt of the High Court's requisition.

Very considerable inconvenience having been felt in consequence of the great delay in the offices of Zillah Judges and others in forwarding the records of cases called for by the High Court on appeal from the judgments and orders passed therein, the Court are pleased to notify that they expect that in future, within seven days from the receipt of their order calling for a record, that the record will be despatched, or, in the event of any delay occurring in its despatch, that a reply will be sent explaining the cause of the delay and the date on which it is expected that the requisition of the Court will be complied with.

2. The High Court think it preferable that in regular appeals the entire record be sent than that there should be such delay as has been experienced up to the present time; but the Court have every expectation that after this notice Judges of all grades will impress upon their ministerial officers the necessity for complying with the Court's orders with greater promptness, and that the Court will have no further cause of complaint in this respect.—(*C. O.*, 1864, *No.* 10, *April 26th.*)

Translation of decision not to be sent, but decision itself, either in original or in copy.

Much inconvenience and delay having been occasioned owing, in some instances, to the submission of a vernacular translation of an English decision, and in others

to the omission to submit the decision in any form whatsoever with the records of cases appealed to the High Court, all local Judges are requested to arrange for the due submission *in all instances* of the original decision, or an authenticated copy of the same, in the language in which it may have been recorded.—(*C. O.*, 1863, *No.* 10, *March* 19*th.*)

Frequent instances having occurred where copies of translations, instead of copies of judgments of the lower courts "written in the vernacular language of the Judge," have been filed in the High Court with petitions of appeal, all Civil Judges are requested, in complying with applications for copies for the purposes of appeal, to carry out the requirement of the law (section 373, Act VIII of 1859) and furnish copies, and not translations, of their judgments.—(*C. O.*, 1864, *No.* 28, *September* 20*th.*)

Several recent instances having occurred of the neglect of the provisions of Civil Circular No. 28, dated 20th September 1864, the Court again call attention to the subject. A *copy* of the judgment in the language in which it was delivered is required, and not a translation of that judgment. The Judges are requested to draw the particular attention of the Subordinate Judges to the subject.—(*C. O.*, 1867, *No.* 29, *September* 13*th.*)

Maps.

The High Court is pleased to direct that in civil cases sent up to it in appeal, in which the preparation of maps may have been necessary for the elucidation of any points of importance, such maps, if drawn on paper, not on tracing cloth, may be pasted upon cloth before being despatched with the records. The Court has at times been subjected to much inconvenience from the tattered condition in which maps in important cases have come before it.—(*C. O.*, 1867, *No.* 2, *January* 14*th.*)

Execution cases.

The High Court is pleased to direct that the records of *execution cases* sent up in appeal to it be invariably submitted complete, that is, that all the papers connected with them in the lower courts, whether original or appellate, be sent up, so that they may be at hand should a reference to the same be required by the Court.—(*C. O.*, 1867, *No.* 5, *February* 4*th.*)

APPEALS TO THE PRIVY COUNCIL.

The Court desire to draw the attention of Zillah Judges and Judicial Commissioners to the annexed copy of rules recently passed by the Court relating to the admission of appeals to Her Majesty in Council, and to the transmission of such appeals to England.

2. The duties devolving on Zillah Judges under these rules are not to be delegated to Subordinate Judges or Moonsifs under section 19, Act XVI of 1868.*—(*C. O.*, 1870, *No.* 27, *September 5th.*)

Rules of the High Court of Judicature at Fort William in Bengal relating to the admission of appeals to Her Majesty in Council, and to the transmission of such appeals to England.

I.—Every petition for the admission of an appeal under section 39 of the Letters Patent shall contain, amongst other things, an application for a certificate either that the—

(1) value of the sum or matter at issue, or of the property to which the claim or question relates, is not less than Rs. 10,000;

(2) or that the case is a fit one for appeal.

Upon such petition and application being made, notice will be served on the opposite party to show cause, within the time specified in the notice, why such certificate should not be granted; and any vakeel who appeared for such opposite party in the High Court shall be bound to accept service of such notice, and such service shall be binding on the client.

If such certificate be not granted the petition will be dismissed.

II.—With the petition, or within six months from the date of the decision appealed against, the appellant shall furnish security for the costs of the respondent, to the extent, in ordinary cases, of Rs. 4,000: such security may consist either of cash or Government securities, or of immoveable property; or the appellant, if the appeal be against a judgment passed in original jurisdiction, may enter into a recognizance with two sureties to be approved by the Registrar.

When the security offered consists of immoveable property, the appellant shall file a mortgage bond duly registered, together with a specification of the surety's title.

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* Now sec. 27, Act VI of 1871.

When such bond has been filed, the court shall direct the security to be tested either by the Registrar or by the Judge of the zillah court in which the immoveable property pledged is situated. If the security be found insufficient, the appellant shall be bound, within six weeks from the date of an order to that effect, to deposit cash or Government securities to the extent of Rs. 4,000, or to such amount as may raise the value of such security to Rs. 4,000.

But in any special case the court may, if it think fit, on the application of the respondent, require security to a larger amount; in no case, however, exceeding Rs. 10,000.

III.—It shall be competent to the court, at any time before the admission of the appeal, upon cause shown, to revoke the acceptance of any security and to make further directions thereon.

IV.—With his petition for the admission of the appeal, the appellant shall deposit the sum necessary to defray the cost of translating, transcribing (or printing), and transmitting the record. Such sum shall be—in respect of appeals from the appellate side of the court—either Rs. 2,000, or the sum certified by the Clerk of Privy Council Appeals as the probable cost of such transcript, and so forth, the estimate of such cost being prepared as directed in Rule XII; and in respect of appeals from original jurisdiction, Rs. 500 when the record is not to be printed, or Rs. 700 when it is to be printed here.

V.—When the security has been approved, and the deposit made for transcript, &c., under Rule IV, the court may declare the appeal admitted; but if the petitioner shall not perfect his security and make such deposit within such time as the court may direct, his petition shall be dismissed.

VI.—After the lodging of the petition, or on the application of any party intending to appeal to Her Majesty in Council, accompanied by a fee of Rs. 16, the Clerk of Privy Council Appeals shall forthwith prepare an estimate of the expense of translating, transcribing or printing, and forwarding to the Registrar of the Privy Council the record of the case, including a margin of Rs. 500, and shall furnish such estimate to the vakeel or attorney of the appellant or applicant, who shall be bound to pay into court, within one month from receipt of such estimate, the difference between the amount thereof and the amount already deposited, if any; provided that the appellant, within two weeks after his

making payment, shall be at liberty to object to the estimate and to obtain the order of the court on such objection.

VII.—The application for estimate shall state whether or not the transcript is to be printed in India.

VIII.—Ordinarily the whole record shall be transcribed, with the following exceptions:—

First.—Such formal documents as are directed by clause 2 of Her Majesty's Order in Council, dated 13th June 1853, to be excluded, and whereof the omission is to be certified in the second index.

Second.—Such papers as the parties may agree to omit.

Third.—Such accounts or portions of accounts as the Registrar or other officer empowered for that purpose may consider unnecessary, and as the parties may not have specifically prayed to include by application to the proper officer within one month from the filing of the petition in respect of the appellant, and from receipt of notice in respect of the respondent. Provided that neither of the parties shall be at liberty to apply for the inclusion of any account or part of an account which has not been marked or endorsed as an exhibit under the 39th or 132nd section of the Code of Civil Procedure, unless with the special leave of the court on motion made for that purpose. Provided also that if any party shall apply to have included in the transcript record any accounts or documents which the Registrar or other officer may consider unnecessary, such document shall be translated and transcribed as an appendix to the transcript, with a note of the circumstance.

IX.—All documents which are not originally in the English language, and which have not been translated for the use of the court, shall be translated into English, and all translations made or used shall be revised and certified by the sworn examiner.

X.—An index of all the documents included in the transcript shall be prepared and annexed to the record in the form now in use, and shall be followed by a list of all other papers, documents, and exhibits in the cause not included in

the transcript: the draft of this index, instead of a vernacular list of papers (as hitherto supplied), shall be furnished to the parties, who shall be at liberty to object thereto within three weeks from date of receipt.

In the index and transcript the papers shall be placed in the following order:—

Plaint.
Written statements.
Examination of parties or their agents, &c.
Injunctions.
Orders of attachment, &c. (if any), obtained before judgment.
Issues framed (if any).
Exhibits of plaintiff.
Ditto of defendant.
Depositions of witnesses for plaintiff.
Ditto ditto for defendant.
Report of Commissioner (if any), with maps, depositions, &c., annexed.
Judgment and decree.
Memorandum of appeal.
Cross-appeal or memorandum of objections under section 348 (if any).
Proceedings in appellate court (if any).
Judgment and decree of that court.
Appendix (if any).
List of papers omitted under clause 2 of Her Majesty's Order in Council, and under the 8th of these rules.

XI.—The following charges shall be payable in respect of the matters specified:—

	Rs.	A.	P.
Estimate of cost	16	0	0
Translation of vernacular portion of record per 1,000 words	6	10	8
Examination of ditto	3	5	4
Copying English portion of record, for every 1,440 words, or part thereof	1	0	0
Examining ditto, for every 1,440 words, &c. ...	0	8	0
Transcribing (one copy), per folio of 72 words, (or at the option of appellant) ...	0	2	0
Printing (55 copies), per printed page	3	8	0
Examination of transcript record, for every 72 words, or part thereof	0	1	0
Examination of correction of the press, for every 1,125 words	1	0	0
Certifying two copies of printed record, for every 10 printed or manuscript pages, or part of 10 pages ..	1	0	0
Preparation of index, for every 10 papers, or part of 10 papers	2	0	0

The above rates will be subject to alteration.

XII.—The estimates shall include these several matters and be framed in accordance with the charges above specified; and any appellant who has filed his petition of appeal shall be deemed to have incurred the charge for the preparation of an index and estimate, whether the appeal be admitted or not.

XIII.—If at any time after the admission of the appeal, but before the transmission of the record to England, it be shown to the satisfaction of the court that the security given by the appellant is insufficient, or it should appear to the court that further payment is required for the purposes of the transcript, the court may call on the appellant to furnish other and sufficient security, or to make the required payment within a time to be limited; and if the appellant fail to comply with such order, the proceedings shall be stayed, and the appeal shall not proceed without an order of the Judicial Committee, and in the meantime execution of the decree of the High Court shall not be stayed.

XIV.—When the record has been transmitted to the Privy Council, the appellant may obtain a refund of the balance, if any, of the amount which he has paid into court under Rules IV and VII.

XV.—The foregoing rules shall take effect from and after the 15th August next, all previous rules, including those made by the late Sudder Court by a resolution bearing date 7th December 1858, being superseded and rescinded, and shall apply to all petitions now pending for the admission of an appeal to Her Majesty in Council as if the same had been presented on the said 15th day of August.

Communications concerning Privy Council Appeals to be in English not Vernacular.—Enquiries about securities in Privy Council Appeals.

(*C. O.*, 1867, *No.* 1, *January 4th*)

Much inconvenience being occasioned by Zillah Judges making returns in the Vernacular, and not in the prescribed form, to precepts directing inquiry into the value of securities in cases of appeal to Her Majesty in Council, and to other orders in such cases, which returns must afterwards be translated for incorporation in the proceedings, the attention of the Zillah Judges is called to the subject, and they will be good enough invariably to make their returns, in

matters connected with appeals to Her Majesty in Council, in the *English language*.

The Court will expect this order to be carefully observed, and the Judge's attention is further drawn to the Rules of Practice* in respect of such appeals, by which the duty of making inquiries as to the sufficiency of security is imposed in the first instance on the Judges themselves, and is not to be delegated to subordinates. This need not prevent the Judges from directing a local inquiry upon any particular point in the investigation, which, for special reasons, they may find it necessary to order, and which they cannot conveniently conduct themselves.

* Resolution of the Presidency Court of Sudder Dewanny Adawlut, dated the 7th of December 1858, viz.—

Rule X.—For this purpose† it will be merely necessary for the Zillah Judge, instead of ascertaining questions of possession and value by the agency of his Nazir, as has been the usual practice, to pursue the enquiry himself (*first*) by a proclamation of the tender made in the court of the Judge, and of any Moonsif, within whose jurisdiction any portion of the property may be situate; and (*next*,) by requiring the surety to present *primâ facie* proof of possession, viz. his deeds, papers, and documents, and to produce witnesses personally cognizant of the fact.

† That is, that the Judge may certify to the sufficiency of the security tendered by the appellant, after due enquiry and hearing of such objections as may be urged, within two months from the date of receipt by him of this Court's orders.—Rule IX.

RENT SUITS.

Introduction of Act VIII, 1869, B.C.

In accordance with the wishes of His Honor the Lieutenant-Governor of Bengal, and with reference to Government Notification dated the 24th February last,* declaring that Act VIII (Bengal Council) of 1869 shall take effect in the districts therein named from the 13th instant, corresponding with the 1st Bysack 1277 of the Bengali era, the Court direct the Judges of those districts in which the new law will be in operation† to watch its working, and to notice any circumstances connected therewith which shall appear to them after a fair trial to call for consideration.—(*C. M.*, 1870, *No.* 3, *April* 14*th.*)

* *Vide Calcutta Gazette* of 2nd March, 1870, page 361.

† Backergunge. Beerbhoom. Bhagulpore. Burdwan (E). Burdwan (W). Chittagong. Dacca. Dinagepore. Gya. Hooghly. Jessore. Midnapore. Moorshedabad. Mymensingh. Nuddea. Patna. Purneah. Rajshahye. Rungpore Sarun. Shahabad. Sylhet. Tipperah. Tirhoot. 24-Pergunnahs.

Judgeships according to civil jurisdiction.

Rules for the prompt trial of undefended and other suits for arrears of rent in the Civil Courts under Act VIII of 1869.—(*Circulated with H. C. No.* 372, *dated 4th February* 1871.)

1. Every summons in any suit for arrears of rent, not being a suit in which enhancement is sought, brought under the provisions of Act VIII of 1869 (B.C.), shall command the defendant to appear at the expiration of fourteen clear days after the service thereof.

2. Every such suit entered in the register as directed by section 42 shall be marked thus—"Rent Suit," "Baki Khazanar Mokuddama," "Baki Malguzari."

3. Immediately on the return of the summons in any such "Rent Suit," the suit shall be entered in a list of causes in form annexed, to be stuck up in the court-house, specifying the day for hearing, which shall be on the day fixed for the appearance of the defendant, or on the earliest day on which the court shall sit after such day.

4. Each such suit shall be called on in its turn at the sitting of the court, and before suits of any other description, upon the day for the hearing thereof; and in every case in which it shall be shown that the defendant has been duly served with the summons in proper time to enable him to appear and defend the suit, but the defendant does not, either in person or by any authorized agent or pleader, appear or make answer to the suit, the case shall be forthwith taken up and heard *ex parte*, unless in any particular case the court, for special reasons to be recorded in the proceedings, shall think fit to order otherwise.

5. Provided, nevertheless, that no suit for arrears of rent shall be called on and tried *ex parte* when the summons shall not have been served at least fourteen clear days before the day of hearing.

6. When it shall appear that the summons has not been duly served, or that fourteen clear days have not elapsed from the date of the due service of the summons, the case shall stand over until a day to be fixed immediately after the expiration of fourteen clear days from the date of the due service of the summons.

7. In cases where the defendant appears and makes answer or desire to contest the claim, the case may either be taken up and tried at once, if it appear to be likely to be a short one, or may be placed in the ordinary list of defended

causes, and come on in its turn, if such latter course appear to the Judge to be expedient with reference to the state of his file or the convenience of the parties.

List of Rent Suits in the Court of the of
(*para.* 3.)

Number of Case on the Register.	Names of Parties.	Claim.	Date fixed for trial

Execution of decrees in Rent Suits.

The High Court having observed that irregularities are committed in the execution of decrees in rent suits, are pleased to direct the attention of District Judges to the positive rule laid down in section 58 of Act VIII of 1869 (B.C.) as to judgments for amounts not exceeding Rs. 500, and to intimate that the same process of execution cannot be executed more than once; and the Court accordingly direct that the reception of supplementary lists of property to be attached, or other devices by which the provisions of this section are evaded, may be at once put a stop to.—(*C. O.*, 1874, *No.* 18, *July* 10*th.*)

On a reference from the Judge of Bhagulpore, the High Court (No. 324 of 9th February 1875) observed that the meaning of the circular order was not that a particular form of process can *issue* only once:—"Supplementary lists of property are to be refused in those instances only where they are put in to keep alive a case of execution in which the three years' limit is about to expire. The intention of the circular order in this respect, merely carrying out the law, was to prevent parties who, by lapse of time, are debarred from taking out a fresh process from resorting to devices for availing themselves of a process already spent."

Rent deposits, rent payable in kind.

In a district where the system of paying rent in kind prevails, a ryot has the right to deposit in court, under section 46, Act VIII (B.C.) of 1869, such portion of the value of his produce as represents the rent admittedly due to the zemindar.—(*C. M.*, 1875, *No.* 4, *March* 5*th.*)

OFFICIAL LANGUAGE IN CIVIL COURTS.

Vernacular of District.

The Court are pleased to direct that in all plaints, pleadings, and proceedings, oral or written, in the mofussil courts subordinate to the High Court the language shall be the *vernacular of the district*, and not Persian, Persianized Urdu, or any other foreign language.—(*C. O.*, 1864, *No.* 16, *June 3rd.*)

A copy of the Minute recorded by His Honor the Lieutenant-Governor, under date the 4th December 1871, (relative to the use of the vernacular language in public offices) having been communicated to the High Court, the Court are pleased to call the attention of civil and criminal Judges and Magistrates of all grades to the [above] circular order No. 16, dated 3rd June 1864.

2. The Court consider it essential, in order to the inferior tribunals attaining their full measure of usefulness, that the language of those tribunals should be that of the great bulk of the people within their jurisdictions, and that the belief and practice to the contrary should be steadily discouraged.

3. Pleaders and mukhtars who practise in the local courts should be enjoined to abstain from the employment of foreign terms for which the vernacular possesses equivalents in daily use, and to draft petitions and other documents in such language as their clients can readily comprehend.

4. The proceedings of the courts, with the exception of those technical words which are of necessary occurrence, should be composed in a style such as would be adopted by persons of good education resident in the district.

5. A special caution is necessary as to the recording of oral testimony. It is too common a practice with mohurirs and other persons employed on this duty, instead of taking down the actual words of the witness (as nearly as a simple adherence to grammar will permit), to render, as it were, what he has said into language which the writer considers elegant or appropriate, that is to say, into the court jargon. In this way not only is the witness, if an ignorant person, perplexed when his supposed statement is afterwards read over to him, but from one witness being made to speak exactly like another, all characteristics of distinct testimony are lost, and the

evidence, when afterwards referred to, loses much of its effect.

6. The Court are quite aware that that which they now require is not to be easily done, but will require patient and vigilant attention on the part of Judges of all grades. The acquired habits and traditions of years are not to be readily subverted, and the best chance of success will probably be found to lie in enlisting the aid of ministerial officers and pleaders of the higher classes, and of the greatest intelligence.—(*C. O.*, 1872, *No.* 8, *March 6th.*)

In Behar, petitions in Nagri as well as Urdu character.

At the instance of His Honor the Lieutenant Governor, the Court is pleased to direct that petitions in the Nagri character be accepted by civil courts equally with those in Urdu.

2. Judges of civil courts of every grade in the province of Behar are enjoined to see that their clerks make themselves acquainted as soon as possible with the Nagri character where they do not already know it. The Court will expect Judges to be firm in resisting prejudices or passive opposition in the matter, and it is requested that the progress made be specially reported on in the next annual report.—(*C. O.*, 1875, *No.* 12, *September 11th.*)

When Advocate or Pleader may address Court in English.

The High Court lays down the following rule for observance in all civil and criminal courts subject to its control.

With the permission of the presiding Judge, any advocate or pleader may address the court in English, when any one of the pleaders on the opposite side is acquainted with that language, or whenever the senior of such pleaders or his client consents to this being done.—(*C. O.*, 1869, *No.* 4, *March 15th.*)

Language in communications to High Court.

The High Court have from time to time [1864] been addressed by various officers by means of letters addressed to the Registrar forwarding some vernacular paper, *e.g.*, judicial proceeding, report of a subordinate ministerial officer,

and such like, and therefore deem it expedient to draw attention to the inconvenience arising from this practice, and to lay down definite rules for the guidance of the officers in this respect.

2. A covering letter of the nature described in the foregoing should never be addressed to the Court.

3. The transmission of vernacular papers should be discontinued as much as possible.

4. No vernacular paper should be addressed to the Court unless it refers to some judicial proceeding before the Court, or is a copy of some proceeding forming part of any judicial record. In such a case the vernacular paper should be sent with a short memorandum written on the face of it.

5. Reports of subordinate ministerial officers are obviously intended only for the superior officer to whom they may be addressed, and should never be transmitted to the Court either in original or by copy. If it be necessary to address the Court regarding the subject-matter of any such report, the contents of that report should be embodied in an English letter.—(*C. O.*, 1864, *No.* 13, *May* 10*th.*)

I am directed to inform you, for the future guidance of yourself and your subordinates, in both civil and criminal departments, that in any case in which the proceedings of any court have been conducted in a vernacular language *other than Urdu*, it is not necessary, when those proceedings are submitted to the High Court, that they should be accompanied by a translation into Urdu.—(*C. O.*, 1864, *No.* 8, *March* 5*th.*)

FORMS OF OATHS AND AFFIRMATIONS.

(*Circular Order*, 1873, *No.* 12, *June* 7*th.*)

The following forms of oaths and affirmations are prescribed by the High Court of Judicature at Fort William in Bengal, under section 7, Act X of 1873.

2. The same forms will be used in criminal as in civil cases.

3. Christian witnesses, interpreters, and jurors to whom oaths are administered are to be sworn upon the New Testament.

4. In other cases the oaths are to be administered upon such symbol, or accompanied by such act as may be

usual, or as such witness, interpreter, or juror may acknowledge to be binding on his conscience.

[On oaths on assumption of judicial office, *see* under APPOINTMENTS, &c.; on *affidavits* for High Court, *see* under COMMISSIONERS.]

For Witnesses.

Oath.

I swear that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false. So help me God.

Affirmation.

I solemnly declare that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false.

For Interpreters.

Oath.

I swear that I will well and truly interpret, translate, and explain all questions and answers, and all such matters as the Court may require me to interpret, translate, and explain. So help me God.

Affirmation.

I solemnly declare that I will well and truly interpret, translate, and explain all questions and answers, and all such matters as the Court may require me to interpret, translate, or explain.

For Jurors.

Oath.

I swear that I will justly and truly try and determine the questions submitted to the Jury in this case, and will give a true verdict according to the evidence. So help me God.

Affirmation.

I solemnly declare that I will justly and truly try and determine the questions submitted to the Jury in this case, and will give a true verdict according to the evidence.

APPOINTMENTS, TRANSFERS, LEAVE, VACATION.

Judicial Officers not to have landed property, or other pecuniary interest within jurisdiction.

Individuals possessing landed property, whether patrimonial, purchased, or other, or being engaged in speculations therein, will be considered ineligible for appointment to judicial office within the limits of the district in which the said property may be situated; but the District Judges need not be thereby deterred from nominating such persons, whenever the extent of land may be so small as, in their estimation, to render the circumstance no objection to their employment in the district to which it appertains.

Judicial officers are interdicted from acquiring landed property by purchase or other means, such as farm, gift, mortgage, as also from all trading or mercantile venture of every description within the limits of the district in which they hold office.

It will be incumbent on the District Judges to bring to the immediate notice of the Court any contravention of this restrictive rule which may come to their knowledge.—(*C. O.*, 1845, *No.* 93, *September 5th.*)

The Court think it necessary to be informed whether any Subordinate Judge or Moonsif, or the wife of any such officer (whether in her own right of inheritance, or purchase, or by gift, or by assignment in lieu of dower) holds any immoveable property, or is a tenant under any zemindar resident or holding property in the district in which the officer serves, or to which it may be proposed to appoint him.

The Court accordingly direct that the fact of holding such property, or being such tenant, be reported in every case by the Subordinate Judge or Moonsif concerned, and

that a return in the annexed form be submitted annually by every District Judge with the yearly statements.

DISTRICTS.	Nature of property and extent of interest held.	Whether held in his own name, or in the name of another, or by wife.	Mode of acquisition, whether by inheritance, gift, purchase, or otherwise, with date of acquisition, if otherwise than by inheritance.	If held under superior landlord, his name and place of residence, with district.	REMARKS.

Lending money.—Rule in Section 2, Regulation XXXVIII of 1793 extended to all Uncovenanted Judicial Officers.

The Court are pleased to direct [1844], with the sanction of the Government, that the rule* in section 2, Regulation XXXVIII of 1793, prohibiting public officers from lending money to persons within their jurisdiction, be extended to all uncovenanted judicial officers.—(*C. O.*, 1844, *No.* 69, *October 25th.*)

Applications for Transfers.

No application from any judicial officer subordinate to a District Judge for transfer to another district will be attended to unless sent through the Judge of his district.—(*C. O.*, 1869, *No.* 8, *July 26th.*)

Procedure on transfers, &c.

Judicial officers, when making over charge of the current duties of their office, should act under the provisions of section 8, Bengal Civil Courts' Act. (*C.O.*, 1872, *No.* 30, *November 26th.*)

* The words of the law are—"The Judges and Magistrates of the Zillah and City Courts, the Judges of the Provincial Courts of Appeal and the Courts of Circuit, and the Registrars to their respective courts and their assistants, or other officers, being covenanted servants of the Company, and the Collectors of the revenue and their assistants are prohibited lending money, directly or indirectly, to any proprietor or farmer of land, or defendant talookdar, or under-farmer or ryot, or their sureties, and all such loans as have been made in opposition to the repeated prohibitions of Government, or which may be hereafter made, are declared not recoverable in any court of judicature."

Judges, &c., to furnish their successors with lists of unanswered letters and of periodical statements overdue.

It having occasionally been pleaded by civil functionaries, who have recently joined their offices, in answer to calls by the Sudder Court for replies to letters and for periodical statements overdue, that, not having had time to look into their records, they were not aware that the replies or statements had not been sent, the Court have been pleased to resolve that all Judges, Commissioners, Magistrates, and Joint-Magistrates, on delivering over charge of their offices, shall furnish the officer who relieves them with a list of all unanswered letters, and of all periodical reports and statements which, having become due, have not been forwarded to this Court.—(*C. O.*, 1835, *No.* 154, *September* 25*th.*)

Applications for Promotions.

No application for promotion on the part of any judicial officer subordinate to a District Judge is to be submitted to the High Court direct.

No application of the kind will be attended to unless it come through the District Judge.—(*C. O.*, 1840, *No.* 73, *March* 6*th.*)

Applications for Leave, Pension, or Gratuity.

All applications for *leave*, *pension*, or *gratuity* should, instead of being sent *direct* to the Registrar of the High Court, be addressed to him through the Accountant-General, who, in forwarding it to the High Court, will be able to attach to it his certificate, which is always necessary before any such application can be dealt with.

Every application for leave, pension, or gratuity should be enclosed in two envelopes, the inner being directed to the Registrar of the High Court, the outer to the Accountant-General.—(*C. O.*, 1864, *No.* 7, *March* 2*nd.*)

The attention of District Judges, Subordinate Judges, and Judges of Small Cause Courts is called to the rules which direct that applications for leave on the part of such officers should be submitted through the High Court to the Government.—(*C. O.*, 1873, *No.* 15, *September* 12*th.*)

Vacation Leave (Subordinate Judicial Officers).

It having been brought to the Court's notice [1864] that some Subordinate Judges of the lower grades who were absent from their stations on leave during the Dusserah last year did not rejoin their appointments immediately at the close of the vacation, I am directed to draw your attention to the section of the Uncovenanted Leave Rules which provides for loss of pay in all cases, and forfeiture of appointment in some cases, in which privilege leave is overstaid. As the Government have ruled that vacation leave to subordinate judicial officers stands *in the place of* privilege leave to other officers, the court will see that the conditions under which the latter is granted are duly observed where the former is obtained.

Accordingly, in submitting any application for vacation leave, the Zillah Judge should distinctly certify that it can be granted without injury to the public service or additional expense to the State; and where an officer has failed to rejoin his appointment in time to sit on the very day the courts re-open after the Dusserah, he should be reported to the Accountant-General as absent without leave, and his absence brought to the notice of the High Court. Under the pay rules no officer can draw any salary until his return from vacation leave.—(*C. O.*, 1864; *No.* 25, *August* 17*th.*)

Casual Leave to Subordinate Judicial Officers.

The High Court is not prepared [1875] to take any steps towards fixing a limit of casual leave for Subordinate Judges and Moonsifs, and would prefer at present to leave the matter to the discretion of the District Judge.

But the number of days during which any Subordinate Judge or Moonsif may have been so absent should be noted in the quarterly statements, and when on any occasion the absence exceeds one day, it should be specially reported to the District Judge.—(*C. M.*, 1875, *No.* 10, *July* 20*th.*)

Newly appointed or transferred Moonsif.

District Judge to invariably report to High Court the date on which a newly appointed or newly transferred Moonsif, acting or substantive, takes charge of his office.—(*C. O.*, 1858, *No.* 128, *July* 26*th, and C. M.*, 1875, *No.* 11, *July* 24*th.*)

Temporary Charge of Moonsifship.

Whenever a District Judge, on the occurrence of any vacancy in the office of Moonsif, appoints a person to act in such office, the appointment should be distinguished in the pay abstract by words such as, "Temporary; officiating by order of District Judge, section 9, Act VI of 1871," and every such appointment should be reported to the Accountant-General as well as to the Court.—(*C. M.*, 1873, *No.* 13, *July* 21*st.*)

The High Court finds it necessary to point out that in all cases in which the sherishtadar is placed in charge of the current duties of a Moonsif's court during the temporary absence on leave or otherwise of the Moonsif, or pending the arrival of his *locum tenens* or successor, the fact should be reported for the sanction of the Court in the same manner as is required to be done when a District Judge appoints an Officiating Moonsif under section 9 of the Bengal Civil Courts' Act, 1871.—(*C. O.*, 1871, *No.* 4, *August* 5*th.*)

Copy of the following letter is forwarded to Judges, with a request that they will attend to its instructions.—(*C. M.*, 1873, *No.* 16, *September* 16*th.*)

From the Accountant-General, Bengal, to the Registrar, High Court, No. $\frac{8}{555}$, dated the 8th September 1873.

I would be much obliged by your issuing an instruction to Judges to report to this office every case of appointment by them of an officiating Moonsif. Much inconvenience is caused by the necessity of my having to make inquiries in every case where a new name appears.

2. The report should contain the name of the officer appointed, whether he is a Government servant, the office to which he is appointed, and the occasion of the appointment. The date of joining should also be communicated either with the first report (which will be a good enough time if it is kept back till the officer joins) or in a subsequent separate report.

Dusserah Vacation.

Several of the Zillah Judges appear to have entirely closed their courts on the criminal as well as on the civil side for the period of the Dusserah Vacation, and to have abstained during the whole of that period from attending to business, receiving or opening communications from the

superior court, despatching returns which were due, or doing any act whatever of an official kind.

Such a practice is justified by nothing in the law or in the orders of this Court; it causes great inconvenience. The Zillah Judges are therefore reminded that under the circular order (Nizamut Adawlut) No. 8, dated 23rd March 1838, issued under the orders of Government, which has never been rescinded, the Court of Session "must never be closed for the despatch of criminal business except on those days only when a total cessation from all business is necessary and usual;" and, moreover, that even on the civil side of their courts it does not follow that because there is no sitting of the court, therefore every official duty is to be suspended.—(*C. O.*, 1868, *No.* 4, *April 2nd.*)

Hours of Court Business (all Civil Courts).

The attention of all civil courts of every grade is called to the subject of the penultimate paragraph* of circular order No. 31 of the 13th October 1863, and the duty of taking their seats punctually at the hour appointed for the sitting of their courts is enjoined upon all Judges.—(*C. O.*, 1873, *No.* 7, *March 7th.*)

At the instance of His Honor the Lieutenant-Governor of Bengal, and in continuation of circular order No. 7, dated the 7th March last, the High Court hereby prescribes 11 o'clock A M. as the latest hour at which Judges of all classes should be *on the Bench*, exception being made in the case of districts where, and at seasons when, it is usual to hold early morning sittings.

2. The District Judge will be held responsible for seeing that this order is carried out by his subordinate courts.—(*C. O.*, 1873, *No.* 11, *May* 31*st.*)

Moonsifs' Titles.

On the representation of the High Court, and at the instance of His Honor the Lieutenant-Governor, His Excellency the Viceroy and Governor-General in Council has been pleased to determine* that

* Letter from Secretary to Government of India, (Foreign Department), No. 2312P., dated 21st August 1875.

* The Court has reason to believe that some of the Judges do not attend punctually at the hour appointed for the sitting of the court. It should be borne in mind that, independently of all other considerations, such a practice must necessarily cause great inconvenience and delay to suitors and witnesses, and that it is unreasonable that many should be kept waiting for the convenience of one.

Moonsifs shall in future be addressed in official correspondence as "Rai Bahadur" if Hindoos, and "Khan Bahadur" if Mahomedans.

2. It is to be clearly understood that the titles are in no way personal, and will cease to be held when office is vacated.—(*C. O.*, 1875, *No.* 11, *September* 10*th.*)

In lieu of the title "Additional Moonsif" now [1874] used in some districts where more than one Moonsif is appointed to a chowkey, the Moonsif should be designated "1st Moonsif," "2nd Moonsif," and so on, according to seniority.—(*C. M.*, 1874, *No.* 3, *February* 13*th.*)

Official Inspections by Judges.

(*C. O.*, 1864, *No.* 15, *May* 14*th.*)

The High Court consider it incumbent on every Civil Judge to visit annually, if possible, the courts subordinate to him (including the courts of those officers who are located at the sudder station) for the purpose of satisfying himself that their proceedings are conducted strictly according to law, and so as to ensure order, regularity, and attention to the rules prescribed for their guidance. While, however, insisting on the necessity and importance of a personal inspection of the subordinate courts by the Zillah Judges, the High Court desire to leave the time and occasion of such inspection to the Judges themselves, who should use their own discretion in making their inspectional visits when, having regard to their other duties and the state of their files, they think it most fit and convenient.

Inspections by Judges.

2. Every inspection of a Moonsif's court, when completed, is to be reported to the High Court. The report should comprise the particular subjects mentioned in the several circular orders noted in the margin, and should contain the result of the Judge's observations on the Moonsif's mode of doing business in respect of ability, temper, vigour, discretion, and punctuality; the state of his office, including "accounts," and the absence or frequency, as the case may be, of complaints. The Judge, however, will

1. General conduct of judicial business (*see* paragraph 3 below).

2. Prompt registration and disposal of plaints according to sections 38, and 29 to 35 of Act. VIII, 1859.—(*C. O.*, 10, 1865, *May* 19*th.*)

3. How daily register of judicial proceedings is kept up.—(*C. O.*, 1870, No. 2, *February* 14*th.*)

4. Manner of recording evidence.—(*C. O.*, 1871, No. 6, *March* 17*th.*)

doubtless remember that while his mission is, on the one hand, to observe and correct errors, he is also to encourage, assist, and advise; he should clearly and courteously explain all difficulties occasioned by inexperience, change of system, or possible ignorance of the English language, and should invite the freest communication on all topics of mutual concern.—(*C. O.*, 1873, *No.* 9, *May 29th.*)

3. The Court have remarked in many cases which have come before them, either in regular or special appeal, a very lax observance on the part of the subordinate courts of the provisions of Act VIII of 1859; it is therefore a special instruction that, when reporting on the mode in which the subordinate courts perform their duties after a personal inspection, the Judges note particularly the degree of attention which is shown by them to the provisions of Act VIII of 1859, especially to the rules regarding the drawing up of the plaint and the written statement of the parties before the court, the examination of the parties to the suit, the settlement of the issues, and the examination of the witnesses. The Judge will, moreover, remark particularly on the degree of ability exhibited by the Judge in examining parties before him, and in checking the putting of irrelevant questions by the pleader before him, in ascertaining and settling the issues in a suit, and generally in the conduct of a case before him.

4. As some misapprehension has been found to exist in regard to the time to be spent upon these visits into the interior, some Judges having applied for tents while on tour, it seems necessary to explain that the Court do not contemplate such a sacrifice of time upon the duty of inspectional visits as the necessity for living under canvas would imply. A few hours spent in a Moonsif's cutcherry, when the business of the Judge's court allowed of this being done, would ordinarily suffice for the object in view; and for such purpose the Judge might travel by dâk, drawing the travelling allowance authorized by the Government of India in its resolution dated 26th April 1858, allowing Zillah Judges, when visiting the Moonsifees in the interior of their district, the option of charging for travelling allowance either at the rate of eight rupees per diem, or eight annas per mile. In any special case, however, where the use of a tent is deemed indispensable, the Judge might procure the loan of the Magistrate's camp equipage, or apply to Government

for the means of discharging the duty required of him.—(*C. O.*, 1864, *No.* 15, *May* 14*th.*)

It has recently come to the knowledge of the Court that a Subordinate Judge, now dead, had been accustomed to show as decided in his monthly and quarterly returns cases in which no judgment had been delivered, although a decision had been announced and noted in the diary, the judgments in such cases being afterwards prepared and signed as leisure permitted.

2. The Court find it necessary to point out that such a practice is reprehensible, as being not merely opposed to law, but productive of mischief in various ways, and also amounting to a misrepresentation of facts.

3. It is the duty of District Judges to take care that no such practice prevails in the courts under their control; and the means of prevention are simple. The Judge, whenever he inspects an inferior court, should examine the diary, and, calling for some of the cases last decided, should satisfy himself that the judgments have been given in correspondence with the diary entries.

4. But the Court believe that, where the District Judge's control is perfectly maintained, such irregularities will not occur at all, and that such mechanical check will need only formal observance.—(*C. O.*, 1873, *No.* 13, *June* 19*th.*)

It shall be the duty of the Zillah Judge, or Judicial Commissioner, at every inspection of a subordinate court, to satisfy himself, and report to the High Court, that the diaries* have been kept in precise conformity with these rules; or if it have not been so kept, he will take proper order in the matter and report the circumstance for the information of the High Court The fact of such inspection by the Zillah Judge should be noted in the book under his signature, with a statement of the condition in which he found it.—(*Extract from C. O.*, 1870, *No.* 2, *February* 14*th.*)

Similar directions that Judges should see whether plaints are promptly registered on presentation, &c.—(*See C. O.*, 1865, *No.* 10, *May* 19*th.*)

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* Daily Register of Judicial Proceedings, &c.,—*see* circular order at page 242.

An instance having been brought to the notice of the High Court of culpable carelessness and negligence on the part of a Moonsif in hearing witnesses and recording evidence in cases under section 15, Act XIV of 1859, which misconduct has since led to the removal of the Moonsif from office, the attention of Zillah Judges and Judicial Commissioners is drawn to the necessity of satisfying themselves that evidence is properly recorded in such cases. The Court directs that Judges on their inspection tours will give special attention to the subject, and that they will not omit to notice it in their report.—(*C. O.*, 1871, *No.* 6, *March* 17*th.*)

PLEADERS (VAKEELS), MUKHTARS.

ADMISSION.

Rules [11*th September* 1873] *for admission of VAKEELS in the HIGH COURT.*

1. Every person before being admitted to practise as a vakeel in the High Court shall have obtained the degree of Bachelor of Laws in the University of Calcutta, Madras, or Bombay.

2. Except as mentioned in Rules 20 and 23, every person before being admitted as a pleader in the High Court shall serve a regular clerkship to some attorney or vakeel of the High Court, to be approved by the Court before the contract is entered into, under articles of clerkship by contract in writing pursuant to the rules hereinafter contained for the full period of two years.

3. The term of service required by the last preceding rule need not be all under one and the same contract, nor to one and the same person, but may be to different persons by virtue of an assignment or assignments, or by virtue of successive independent contracts, upon the dissolution of the original or succeeding contract.

4. The person under whom the articles shall be served shall, during the whole period of the service, be actually practising as an attorney or vakeel in the High Court.

5. No person who is himself acting as clerk to an attorney or vakeel shall be able to take any clerk for service under articles.

6. No person shall be capable of service under these rules until he shall have passed the B.A. examination of the University of Calcutta, Madras, or Bombay.

7. The contract in writing whereby a person shall engage as aforesaid to serve as a clerk to any attorney or vakeel shall be filed with the Registrar of the High Court on the Appellate Side within one calendar month after the execution of the same, together with an affidavit by such attorney or vakeel that he has been himself duly admitted and has been practising for five years as an attorney or vakeel, and that such contract has been duly executed by himself and by the clerk therein mentioned. And in every such affidavit shall be specified the name of the attorney or vakeel and his place of abode or business, and the name of the clerk and his place of abode, together with the day on which the contract was actually executed.

8. In case the articles of clerkship shall be assigned, the assignment shall be in writing, and shall be in like manner filed within one calendar month after the execution thereof, together with an affidavit that the same has been executed by all the necessary parties. And in every such affidavit shall be specified the name of the attorney or vakeel to whom the articles are assigned and his place of business, together with the day on which the assignment was actually executed.

9. If by reason of death, or for any other good and sufficient reason, an assignment of the articles cannot be obtained, a fresh contract in writing shall be entered into by the clerk with the person under whom the service is continued, which shall be filed in the manner and with the affidavit prescribed by Rule 8.

10. In case the contract or assignment, together with the necessary affidavit, be not filed within the time specified, the same may be filed with the said Registrar after the expiration thereof; but the service of such clerk shall be reckoned to have been commenced or renewed from the date of filing such contract or assignment, unless the Court shall otherwise order.

11. Every person who shall be articled to serve as a clerk to a vakeel or attorney for the purpose of being admitted as a vakeel shall, during the whole period of such service, continue, and be really and actually employed by such

attorney or pleader in the proper business, practice, and employment of an attorney or vakeel.

12. Before any person shall be admitted as a vakeel in the High Court, he shall sign and file with such Registrar as aforesaid answers to the questions contained in the Schedule A, hereunto annexed; and the person or persons under whom he shall have served his articles shall sign and file answers to the questions contained in the Schedule B, hereunto annexed, as also a certificate in the form given therein.

13. In case the applicant should show sufficient cause to the satisfaction of the Court why the last rule cannot be fully complied with, it shall be in the power of the Court to dispense with any part of this rule which it may think fit and reasonable.

14. The applicant shall in all cases produce satisfactory testimonials as to his good character.

15. The applicant shall also, if required, sign and leave with the said Registrar answers in writing to such other questions as shall be directed by the Court touching the service and conduct of the applicant, and also if required attend the Court personally for the purpose of giving further explanation touching the same; and shall also, if required, procure the attendance of the person or persons with whom he shall have served his clerkship as aforesaid to answer, either personally or in writing, any questions touching such service or conduct, or shall make proof to the satisfaction of the Court of his inability to procure the same.

16. Upon compliance with the aforesaid rules, if the Court shall be satisfied as to the fitness and capacity of the applicant, a certificate shall be granted to him in the following form:—

In pursuance of the rules of the High Court relative to the admission of vakeels, it is hereby certified that A. B. has complied with the requirements of the said rules, and that he is a fit and proper person to be admitted to practise as a vakeel in the High Court.

(Sd.) C D.,

A Judge of the High Court.

17. Any person intending to apply to be admitted to practise as a pleader in the High Court shall also give one month's notice in writing to the Registrar aforesaid, stating

his intention, and shall also insert in the *Calcutta Gazette* a like notice for four successive weeks prior to his application.

18. Any person who has been admitted to the degree of B. L. in the University of Calcutta, Madras, or Bombay, and who shall produce the certificate mentioned in Rule 16, shall, after giving the notice required by Rule 17, be enrolled as a vakeel of the High Court.

19. Any person who has been admitted to the degree of B.L. in the University of Calcutta, Madras, or Bombay, and who shall prove to the satisfaction of the Court that he has *bonâ fide* practised for four years as a pleader in one or more of the courts of the mofussil subject to the jurisdiction of the High Court, and that he is a person of good character, may, after giving the notice required by Rule 17, be admitted to practise in the High Court as a vakeel without service under articles.

20. Every person applying to be admitted under the last rule shall, one month prior to admission, leave with such Registrar as aforesaid answers to the questions contained in the Schedule C, hereunto annexed, and also a certificate or certificates in the form contained in Schedule D, hereunto annexed.

21. In case the applicant should show sufficient cause to the satisfaction of the Court why the last rule cannot be complied with, it shall be in the power of the Court to dispense with any part of this rule upon such terms as it may think fit and reasonable.

22. An applicant under Rule 19 shall in all cases produce satisfactory testimonials as to his good character; and shall also, if required, leave with the said Registrar answers in writing to such questions as the Court shall direct touching the qualification of such person to be admitted as a vakeel in the High Court; and shall, if required, attend the Court personally for the purpose of giving further explanation touching the same.

23. Any attorney of the High Court, who shall establish to the satisfaction of the Court that he has *bonâ fide* practised as such for the period of three years, and that he is a person of good character and ability, may be admitted to practise in the High Court as a vakeel.

24. These rules shall come into force on the first day of January 1874.

Schedule A., paragraph 12.

Questions as to due service of articles to be answered by the applicant.

1. What was your age at your last birthday?

2. Have you served the whole term of your articles at the place where the person or persons to whom you were articled or assigned carried on his or their business? and if not, state for what reason.

3. Have you at any time during the term of your articles been absent without the permission of the person or persons to whom you were articled or assigned? and if so, state the length and occasions of such absence.

4. Have you during the period of your articles been engaged or concerned in any, and if any what, profession, business, or employment other than your professional employment as clerk to the person or persons to whom you were articled or assigned?

5. Have you since the expiration of your articles been engaged or concerned, and for how long a time, in any, and if any what, profession, trade, business, or employment other than the profession of an attorney or vakeel?

Schedule B., paragraph 12.

Questions to be answered and certificate to be given by the person or persons with whom the clerk may have served any part of his time under articles.

1. Has A. B. served the whole period of his articles at the place where you carry on your business? and if not, state the reason.

2. Has the said A. B. at any time during the period of his articles been absent? and if so, state the length and occasions of such absence.

3. Has the said A. B. during the whole period of his articles been engaged or concerned in any, and if any what, profession, business, or employment other than his professional employment as your articled clerk?

4. Has the said A. B. during the whole period of his clerkship, with the exceptions above mentioned, been faithfully and diligently employed in your professional business of an attorney [*or* vakeel, *as the case may be*]?

5. Has the said A. B. since the expiration of his articles been engaged or concerned, and for how long a time, in any profession, trade, business, or employment other than the profession of an attorney or vakeel?

And I do hereby certify that the said A.B. has duly and faithfully served under his articles of clerkship [*or* assignment of articles, *as the case may be*] bearing date, &c., for the term therein expressed, and that he is a fit and proper person to be admitted as a vakeel of the High Court.

Schedule C., paragraph 20

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1. What was your age last birthday?
2. What is the date of your enrolment as a pleader, and where were you enrolled?
3. Have you practised in one or several courts? State the periods during which you practised in each, and the dates of the beginning and end of each period.
4. Have you at any time been engaged or concerned in any, and if any what, profession, business, or employment other than that of a pleader? If so, when and for what period.

Schedule D, paragraph 20.

I, C. D., District Judge [*or* Subordinate Judge, *or* Moonsif, *as the case may be*] do certify that to the best of my belief A.B. practised in my court regularly as a pleader from the day of 18 to the day of 18 , and that he was diligent and faithful in the performance of his duties, and that he is a fit and proper person to be admitted as a vakeel of the High Court.

(Signed) C. D.

Regulations made by HIS HONOR the LIEUTENANT-GOVERNOR OF BENGAL, pursuant to the provisions of Section 6, Act XX of 1865, for conducting the EXAMINATION of applicants for admission as PLEADERS or MUKHTARS in the MOFUSSIL COURTS subordinate to the HIGH COURT of Judicature at Fort William in Bengal.

1. In order to the ascertainment of the qualifications of candidates for admission as pleaders and mukhtars in the

mofussil courts subordinate to the High Court of Judicature at Fort William in Bengal, the Lieutenant-Governor of Bengal will from time to time appoint Examiners in Law, who shall have a President and a Secretary.

2. The examination of candidates shall be held on such dates within the month of January or February in each year as shall be appointed and duly notified by the Examiners in Law.

3. The examination shall be conducted by the Examiners in Law, and shall be held under the superintendence of the person or persons appointed for that purpose.

4. The examination of candidates for pleaderships of the higher grade shall be held in Calcutta; the examination for lower grade pleaders and for mukhtars shall be held at Calcutta, Patna, Dacca, Cuttack, and Gowhatty.

5. The examination for higher grade pleaders shall be conducted in English; for lower grade pleaders and for mukhtars in English or in the vernacular of the district, at the option of the candidate, as declared in his application for admission to the examination.

6. The examination shall be in part by written questions, the answers to which shall be in writing, and in part *vivâ voce*. But the Examiners in Law, with the sanction of the Lieutenant-Governor, shall have power to dispense with the *vivâ voce* examination in the vernacular, if it so seem fit.

7. The Examiners shall prepare the written questions, of which there shall be not less than four papers for the pleaders' and mukhtars' examinations respectively.

8. Each paper shall contain twelve questions, and shall bear a full value of 160 marks.

9. The full number of marks for the *vivâ voce* examination, in which candidates shall be asked at least five questions, shall be 50.

10. The questions shall be so framed as to test the knowledge of the candidates in the subjects mentioned in the rules passed by the High Court for the qualification, admission, and enrolment of pleaders and mukhtars in mofussil courts; and they shall be so prepared that a candidate may be able to pass by studying the regulations, enactments, and text-books there specified.

11. The number of marks to which each candidate shall be entitled for his answers to the written or oral questions shall be determined by the Examiners in Law.

12. To be entitled to pass, candidates must obtain not less than the marks hereunder specified:—

	In each of the written papers.	In the *viva voce* examination.
Higher Grade Pleadership	100	30
Lower „ „	80	20
Mukhtarship „	100	30

13. No candidate will be allowed to enter the examination room with any books or private memoranda, and any one detected doing so will forfeit all fees paid by him, and will not be permitted to undergo examination. Any candidates detected in the act of using unfair means, such as communicating with each other, or copying from their neighbours, or from private memoranda or books, &c., will be summarily ejected from the examination room, and shall forfeit all benefit to be derived from the previous portion of the examination and all right to proceed further, together with all fees paid by them.

14. When the examination shall have been concluded, the Examiners in Law shall submit the names of those candidates who have passed, together with a report of their proceedings to Government.

15. The names of the successful candidates shall be published in the *Calcutta Gazette*, and certificates, to be granted by the Examiners in Law under the signatures of the President and Secretary, shall be forwarded for distribution to the successful candidates by the Judges of their respective districts.

Rules drawn up by the HIGH COURT [12*th September* 1874] *in accordance with Section* 4, *Act XX of* 1865, *for the qualification, admission, and enrolment of PLEADERS and MUKHTARS in MOFUSSIL COURTS.*

I.—General.

The following rules, framed by the High Court of Judicature at Fort William in Bengal, under section 4, Act XX of 1865, in supersession of previous rules on the same subject, shall take effect from the date of their publication, except so far as they relate to the qualifications required by clause 1 of Rules 7, 9, and 11, respectively, as to which the rules dated 2nd May 1866 shall continue in force until the 1st of January 1875.

2. Pleaders in the mofussil courts of the Regulation Provinces within the limits of the jurisdiction of the High Court shall, as regards qualifications for practising in civil courts, be of two grades:—

I.—Those of the higher grade shall be competent to appear, plead, and act in any civil court subordinate to the High Court.

II.—Those of the lower grade shall be competent to appear, plead, and act in the courts of Moonsifs and in Small Cause Courts, and in the courts of officers in the district of Cachar, and the divisions of Assam, Chota Nagpore, and Cooch Behar, exercising the powers of Moonsifs under the Bengal Civil Courts' Act, 1871.

3. Mukhtars duly admitted and enrolled shall be competent to appear and act in any civil court subordinate to the High Court.

4. Provided that no pleader or mukhtar shall be enabled under these rules to practise in every court, except as specified in their certificates.

5. The Examiners hereinafter mentioned shall be the persons appointed to be Examiners by the Lieutenant-Governor of Bengal under the provisions of Act XX of 1865.

II.—Qualification for Pleaders of the Higher Grade.

6. The following persons may be admitted as pleaders of the higher grade, that is to say:—

1*st*—Any person who shall have obtained the degree of Bachelor of Law of one of the Universities of Calcutta, Madras, or Bombay, or shall be a Licentiate in Law of one of the said Universities: Provided that his application for admission as a pleader be made within one year from the time of his obtaining such degree or license, or within such further time as the High Court shall for any special reason allow; or

2*nd*—Any person who produced a certificate from the Board of Examiners that he has passed in the first class an examination in the subjects prescribed from time to time by the High Court for the pleadership examination.

Such subjects shall, until further order by the Court, be as follows:—

Regulations, Enactments, and Text-Books.

Subjects	
1*st*—The law of property current in Bengal—	
A—With reference to the permanent settlement; to the Government lien on land; to claims to hold land exempt from the payment of revenue, and to the mode in which estates can be brought to sale for arrears of revenue.	Regulations (Bengal) I, VIII, X, XIV, XIX, and XLIV of 1793, and the Regulations and Acts by which the same have been altered; Act XI of 1859, and the preamble to Regulation (Bengal) II of 1793.
B—The law of under-tenures, and the mode in which the same can be brought to sale for arrears of rent	Regulation (Bengal) VIII of 1819; Act VIII of 1865 (Bengal Council); Act VIII of 1869 (B.C.) (Except as to candidates to practise in Orissa, Chota Nagpore, and Assam, who will be required, as heretofore, to pass in Act X of 1859.)
C.—The relation of landlord and tenant	Act VIII of 1869 (B.C.), except as above.
D.—Mortgages; registration of assurances.	Macpherson on Mortgages; Act VIII of 1871.
E.—The Hindoo law of inheritance, succession, and adoption	Dayabhaga and Mitakshara; Dattaka Chundrika, and Macnaghten's Principles of Hindoo Law, first seven chapters.
F—Mahomedan law.	Macnaghten's Principles of Mahomedan Law, except chapter 9.
G.—The Indian Succession Act	Act X of 1865; Act XXI of 1870.
2*nd*.—Obligations arising from contracts.	Macpherson on Contracts; Act IX of 1872.
3*rd*.—Civil procedure.	Act VIII of 1859; Act XXIII of 1861; Act XI of 1865.
4*th*.—The law of evidence.	Act I of 1872.
5*th*—The law relating to stamps.	Act XVIII of 1869, and Act VII of 1870.
6*th*—The law of limitation.	Act IX of 1871.
7*th*—Criminal law and procedure	The Indian Penal Code (Act XLV of 1860, and Act XXVII of 1870), and the Code of Criminal Procedure, Act X of 1872.

7. In order to qualify a person to present himself for the examination mentioned in Rule 6, clause 2nd:—

1*st*.—He must hold a certificate of having passed the First Arts examination of the University of Calcutta, Madras, or Bombay, or the first public examination before Moderators at Oxford, or

the previous examination at Cambridge, or the preliminary examination in Arts in one of the Scotch Universities, or the examination in Arts for the second grade at Durham, or the matriculation examination at the University of Dublin or London, or a certificate of having passed some other public examination which shall be certified by not less than three Judges of the High Court as being in their opinion equivalent to one or other of the above-mentioned examinations.

2nd.—He must hold a certificate of having regularly attended a full course of lectures in law at one of the colleges affiliated to the Calcutta University, or such law lectures elsewhere as shall be deemed by the High Court to be sufficient.

3rd.—He must produce a satisfactory certificate of good moral character, and be above the age of 20 years.

III.—QUALIFICATION FOR PLEADERS OF THE LOWER GRADE.

8. Every person may be admitted as a pleader of the lower grade who shall produce a certificate from the Board of Examiners that he has passed in the second class the examination mentioned in Rule 6, clause 2nd.

9. In order to qualify a person to present himself for examination for the lower grade—

1st.—He must hold a certificate of having passed the Entrance Examination of the University of Calcutta, Madras, or Bombay, in the first or second class, or the first public examination before Moderators at Oxford, or the previous examination at Cambridge, or the preliminary examination in Arts in one of the Scotch Universities, or the examination in Arts for the second grade at Durham, or the matriculation examination at the University of Dublin or London, or a certificate of having passed some other public examination which shall be certified by not less than three Judges of the High Court as being in their opinion equivalent to one or other of the above-mentioned examinations.

2nd.—He must produce a satisfactory certificate of good moral character, and be above the age of 20 years.

IV.—Qualification for Mukhtars.

10. Every person may be admitted as a Mukhtar who shall be qualified as hereinafter prescribed, that is to say—

1st—If he shall be qualified to be admitted as a pleader of either grade: Provided that his application to be admitted as a Mukhtar shall be made within one year from the time of his obtaining such degree or license, or within such further time as the Court shall for any special reason allow; or

2nd—If he shall produce a certificate from the Examiners that he has passed an examination in the subjects prescribed from time to time by the High Court for the examination of mukhtars. Such subjects shall until further notice be as follows:—

Code of Civil Procedure.	Code of Criminal Procedure.
Law of Limitation.	Registration Act.
Stamp Laws.	Evidence Act.
Small Cause Court Act.	Contract Act.
Penal Code.	

11. In order to qualify a person to present himself for the examination required by these rules for mukhtars—

1st—He must hold a certificate of having passed the Entrance Examination of the University of Calcutta, Madras, or Bombay, or a certificate of having passed the vernacular or minor scholarship examination, or some other public examination certified by the Director of Public Instruction or by an Inspector of Schools to be equivalent thereto.

2nd—He must produce a satisfactory certificate of good moral character, and be above the age of 20 years.

V.—Examinations (Pleaders and Mukhtars).

12. Every candidate for examination for pleadership of either grade, or for mukhtarship, shall, on or before the 1st of November in each year, apply to the Board of Examiners for leave to present himself at the ensuing examination, and he shall establish to their satisfaction that he possesses the qualifications prescribed for such candidates.

13. Such application is not to be transmitted to the Board of Examiners direct, but is to be filed before the said 1st day of November in the court of the District Judge within whose jurisdiction the candidate resides or is employed (Calcutta, for this purpose, being taken to be within the district of 24-Pergunnahs), accompanied by the necessary documents and papers. The Judge shall thereupon inquire into the validity of the certificate of character presented by the candidate, and shall satisfy himself as to the identity of the candidate, and he shall, on or before the 15th November, transmit to the Board of Examiners all such applications with the documents accompanying, together with a list of the applications and annexures and with his opinion in each case as to the sufficiency of the testimonials produced, and any other information which he may think it needful in any case to communciate.

The attention of the High Court has been called [1873] to the circumstance that the applications of candidates for admission to the pleadership examination are sometimes rejected by District Judges without the causes of such rejection being definitely stated, so that it is neither possible for the High Court in case of complaint, where the Judge has left the district, to ascertain whether good ground for rejecting the candidate existed, nor is there anything to guide the Judge's successor in case of subsequent application by the same party. The Court direct accordingly that a brief, but exact, statement of the cause of rejection be appended in future to all orders rejecting such applications.—(*C. O.* 1873, *No.* 4, *January 25th.*)

14. The Board of Examiners shall thereupon take the case of each candidate, with the report of the District Judge, into their consideration, and shall determine whether or not the candidate is possessed of the necessary qualifications. If the candidate is found qualified, the Board shall cause his name, the name of his father, his age and place of residence, and other needful particulars, to be entered in a register, with a declaration that he is permitted to appear at the next ensuing examination at * * * *.

15. An extract from the register shall be forwarded to the District Judge for delivery to the candidate. The Judge shall cause a notice of his having received such extracts to be stuck up in his court-house, and shall deliver them to the candidates on application.

The District Judge, in carrying out this rule and rule 13, shall conform to such instructions as he may receive from the Board of Examiners through their President or Secretary.

16. Before the date of examination, every candidate shall pay into the Government treasury of the 24-Pergunnahs, or of the place where he is to be examined, the fee prescribed by Rule 22, and shall at the same time present to the officer in charge of the treasury the extract from the register furnished to him under Rule 10, and the treasury receipt for the fee shall be endorsed thereon. Every candidate for examination shall produce to the Examiners the extract from the register, with the treasury receipt so endorsed thereon.

VI.—Enrolment.

17. Any person who shall have qualified under these rules, and who shall desire to be admitted to practise, shall pay into the Government treasury of the district in which he shall intend to practise the fee prescribed by Rule 22, and shall, on presentation of the certificate of the Examiners, or of his diploma and the receipt for the said fee, be entitled to apply to the High Court for admission and enrolment.

18. The application, together with the certificate and receipt required by Rule 17, shall be presented to the Judge of the district in which the applicant intends ordinarily to practise, and shall be forwarded by the Judge to the Registrar of the High Court, with such remarks as he may think fit to make thereon.

19. The name of the applicant and his place of abode, together with his father's name and place of abode, shall be affixed in some conspicuous place in the court-house of the Judge to whom the application is sent, and also in the High Court, at least six weeks before the applicant is admitted to practise.

20. The High Court may call for evidence of the respectability of the applicant in any case in which it may be deemed necessary.

21. Upon the applicant's being admitted and enrolled by the High Court, a certificate to that effect shall be forwarded by the Registrar of the High Court to the Judge of the district, who, upon the applicant's delivering and leaving with him a declaration in writing signed by the said applicant in conformity with the recital in the form of certificate given in the second Schedule to Act XX of 1865, shall grant him a certificate as required by the said Act.

VII.—Fees.

22. The fees payable previous to examination and on application for enrolment shall be as follows:—

	Pleader, Higher Grade.	Pleader, Lower Grade.	Mukhtar.
	Rs.	Rs.	Rs.
Before examination	30	20	15
,, enrolment	25	15	10

[Fees not returnable although candidates not examined.—(*C. M.*, 1873, *No.* 4, *March* 31*st.*)]

VIII.—Penalties.

23. If any person having passed the examination entitling him to be admitted and enrolled as a first or second grade pleader or as a mukhtar, and shall fail to apply for such admission and enrolment for a period of one year from the time of passing the examination, he shall not be admitted and enrolled, unless by special order of the High Court the time for such application shall be extended.

24. If any person having been admitted and enrolled as a pleader or mukhtar shall neglect to take out a certificate, or, having obtained a certificate, shall fail to renew it for a period of three years, he shall be suspended, and shall not be entitled to receive a certificate, or to have his certificate renewed, without further orders of the High Court.

25. Any person who shall hold any appointment under Government, or shall carry on any trade or other business at the time of his application for admission as a pleader or mukhtar, shall state the fact in his application for admission, and the High Court may refuse to admit such person, or pass such orders thereon as it thinks proper.

[Declarations issued by order of the court immediately after the passing of Act XX of 1865, to the effect that an applicant for enrolment as a pleader "will be enrolled on resigning his public employment," are not to be considered as entitling parties to be so enrolled on resignation many years after the passing of the Act. Accordingly, no future applications for enrolment under these declarations will be entertained.—(*C. O.*, 1874, 24*th January*, *No.* 6.)]

26. Any person who, having been admitted as a pleader or mukhtar, shall accept any appointment under Government, or shall enter into any trade or other business, shall give notice thereof to the High Court, who may thereupon suspend such pleader or mukhtar from practice, or pass such orders as the said Court may think fit.

[The question having been raised whether practising pleaders of the courts of the interior shall be eligible to the appointment

of Sub-Registrar of Deeds, the High Court are pleased to declare that pleaders of both the higher and lower grades, admitted and enrolled under Act XX of 1865, shall be allowed to hold the office of Sub-Registrar of Deeds without prejudice to their practice. Ordered that a copy of this Resolution be forwarded to all District Judges, with a request that they will watch and report if any inconvenience appears to result from the office of Sub-Registrar being held by a pleader in active practice.—(*C. M.*, 1873, *No.* 21, *December* 13*th.*)]

[No judicial officer shall be allowed to practise as a pleader during the term of any leave that he may obtain from the Court.—(*C. O.*, 1863, *No.* 15, *April* 22*nd.*)]

27. Any wilful violation of any of the above rules shall subject a pleader or mukhtar to suspension or dismissal.

[Printed *forms of* certificate engrossed on the stamps of the requisite value available at the office of the Superintendent of Stationery upon indent from a District Collector, and procurable by purchase at local treasury.—(*C. O.*, 1874, *No.* 21, *September* 25*th*; *C. O.*, 1866, *No.* 23, *June* 15*th.*)]

ENROLMENT.

High Court Pleaders.

A pleader, whether of the senior or of the junior grade, holding a certificate under Act XX of 1865, and the High Court's rules of the 2nd May last, is not restricted by such certificate to any particular court or to a single district, but is entitled to appear, plead, and act in any court subject to the jurisdiction of the High Court, included within the class of courts covered by his certificate: in other words, in any court, in whatever district situated, falling within the particular clause (*a*, *b*, *c*, or *d*) of section 10, Act XX of 1865, to which his certificate relates.—(*C. O.*, 1866, *No.* 33, *August* 23*rd.*)

Pleaders other than High Court Pleaders, also Mukhtars.

The following instructions are issued in connection with the rules of the 12th September 1874, drawn up by the High Court, under section 4, Act XX of 1865.

Pleaders (not being advocates or vakeels of the High Court) and mukhtars are not authorized to practise in any court in a district in which they are not enrolled.—(*C. O.*, 1874, *No.* 22, *September* 25*th.*)

Transfer of practice from one district to another.

Any pleader or mukhtar desiring to be enrolled in any district other than that in which he was originally enrolled must apply by petition to the Judge of that district, annexing thereto his last certificate and a testimonial of character from the district in which he last practised. If his papers are in order he may be enrolled accordingly, and if his certificate has any time to run he may continue to practise under it for the time unexpired.

Every District Judge shall give on application a testimonial of character to any pleader or mukhtar who is enrolled in his district, and who desires to practise in another district, unless there be good reason, in the opinion of the Judge, for withholding such testimonial; in which case the refusal, with the reason, shall be recorded on the back of the application: Provided that, if such pleader or mukhtar shall have practised not in the Judge's court, but in some other court in the district, the testimonial may be granted by the presiding officer of such court and countersigned by the District Judge.

The District Judge shall be responsible for the due maintenance of the rolls prescribed in section 12, Act XX of 1865.—(*C. O.*, 1874, *No.* 22, *September* 25*th.*)

Register of enrolled Pleaders.

District Judges and officers holding the like powers are requested to furnish this office with complete lists, in the form hereto appended,* of all the pleaders and mukhtars enrolled under the High Court's rules of 2nd May 1866, before the 1st April 1872, with the date of enrolment of each and the other particulars for which the form provides.

2. It will be seen that one form only is considered necessary; but there must be three distinct returns in the same form, viz. one for pleaders of the senior grade, another for pleaders of the junior grade, and a third for mukhtars. The headings of the form, it is believed, explain themselves sufficiently, with the exception of heading to column 5, "nature of qualification and date of original admission," which should be understood as providing for the following information. In the case of pleaders, it should show whether

* Tabular form shows these headings—1, name; 2, father's name; 3, age; 4, place of residence; 5, nature of qualification and date of original admission; 6, date of admission and enrolment; 7, date of District Judge's certificate; 8, date of latest renewal; 9, remarks.

they were admitted after examination, or, as possessed of a law degree, under the general operation of the rules of 2nd May 1866, or as old pleaders under the special proviso in Rule 5. Similarly, in the case of mukhtars, it should indicate whether they were admitted after examination under the general rules applicable to such practitioners, or under the specific permission in Rule 39. The date of original admission will of course be the date on which the pleaders and mukhtars of the exceptional classes just described were admitted to practise *before* Act XX of 1865 came into operation.

3. Blank printed forms of each description, and uniform in size and shape, are sent with this circular, for the purpose of being filled up and returned as carefully and as speedily as possible, with a view to being bound up and preserved as an original and permanent record of the High Court.—(*C. M.*, 1872, *No.* 8, *April 23rd.*)

Registers of enrolled Pleaders, &c.

Every District Judge and Judicial Commissioner is requested to forward to the High Court, within fifteen days after the 1st April next, a correct list, according to the enclosed form,* of the advocates and pleaders practising in his own court and in each Moonsif's court in his district.

2. The different classes of pleaders, senior and junior, should be carefully discriminated, and the Government pleader should be described as such.—(*C. M.*, 1874, *No.* 5, *February 18th.*)

Mofussil Law List, 1875.

Mofussil Law List, being a printed list of the pleaders practising in each of the zillahs, forwarded by circular letter No. 1836B of 10th August 1875.

Renewal of Certificate.

Applications made by vakeels and mukhtars for the renewal of their certificates ought to be made in open court,

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* Form for District Court and Subordinate Judge's Court gives these headings—1, name of Advocate or Pleader; 2, nature of qualification (*e.g.*, "Advocate of High Court," "B.L. Vakeel of High Court," "1st grade diploma holder"); 3, date of qualification; 4, date of last license; 5, remarks.

Form for Small Cause Court and Moonsif's Court shows these headings—1, name of pleader; 2, nature of qualification; 3, date of qualification; 4, date of last license; 5, remarks. (Those who hold license for both courts should be distinguished.)

and they should be on stamped paper.—(*C. O.*, 1875, *No. 7A, June 25th.*)

In reporting to the Court the renewal of pleaders' and mukhtars' certificates under section 8 of Act XX of 1865, District Judges will in all cases state the name of the pleader's or mukhtar's father, in order that the pleader or mukhtar may be identified in the rolls in the Court's office.—(*C. O.*, 1874, *No.* 17, *June* 23*rd.*)

All Small Cause Court Judges and Moonsifs should examine the certificates of the pleaders practising in their courts during the last week of every quarter in the year (with a view to renewal at the proper date and on sufficient stamp), and submit a special report on the result of their inspection to the District Judge at the beginning of the ensuing quarter. It is expected that the District Judges will very carefully examine these reports and permit no irregularities to occur; and the subject should also receive attention in the district annual reports.—(*C. O.*, 1874, *No.* 16, *June* 22*nd.*)

PRACTICE.

Access to Record-rooms.

Mukhtars holding certificates under the rules which have been, or may be, passed by the Court under section 4, Act XX of 1865, may be allowed access to the record-rooms of mofussil civil courts in order to facilitate the preparation by them of briefs for the use of counsel or vakeels.—(*C. O.*, 1872, *No.* 26, *August* 3*rd.*)

General Power-of-Attorney.

When at the filing of a plaint parties claim to appear as pleaders or authorised agents, their vakalutnamahs or powers-of-attorney should be, where practicable, filed in original with the plaint; where the power-of-attorney is a general one, a copy should be filed, and the original presented for verification.—(*C. O.*, 1859, *No.* 147, *July* 29*th*, *paragraph* 18.)

Accuracy on the part of the courts in drawing up decrees, so as to "specify clearly the relief granted or other determination of the suit" (section 189, Civil Procedure Code), would be very materially promoted if the parties to

the suit, and more especially their pleaders, would attend to the preparation of the decrees before they are finally recorded, and see that they contain all requisite particulars, and also that they do not go beyond the judgment.

Errors and omissions may be detected by the parties interested which escape the observation of the officers and even of the court, and it is obviously better that such imperfections should be corrected before signature of the decree than upon application weeks, months, or years afterwards.

For this reason the Court thinks fit to order and direct that, after the promulgation of these rules, the pleaders on both sides shall be required to affix their signatures to the decrees of the mofussil courts before they are signed by the Judges, and that, where any pleader shall not have signed the decree, the cause of his failing or refusing to sign shall be certified on the decree.—(*C. O.*, 1867, *No.* 22, *July* 19*th.*)

At every mofussil court a book is to be kept in which all orders, final and interlocutory, in regular suits and appeals, and also orders in miscellaneous and summary cases, are to be entered as soon as they are passed, and are to be attested by the signatures of the vakeels of parties concerned.—(*C. O.*, 1870, *No.* 2, *February* 14*th.*)

Government Pleader appearing for Government.

The following rules are circulated for the guidance of all civil courts subordinate to the High Court.—(*C. O.*, 1871, *No.* 23, *July* 25*th.*)

Rules.

1. In every case in which the Government Pleader shall appear for the Government (whether for the Government as a party on its own account, or for the Government as undertaking, under the provisions of section 70 of Act VIII of 1859, the defence of a suit against an officer of the Government), the Government Pleader shall, in lieu of a vakalutnamah, file a memorandum on unstamped paper signed by him, and stating on whose behalf he appears. Such memorandum shall be, as nearly as may be, in the terms of the form annexed hereto.

2. In every case in which the Government Pleader shall appear on behalf of any officer or servant of the Government, other than cases in which the Government has, under section 70 of Act VIII of 1859, undertaken the defence of the suit, such pleader shall file a vakalutnamah in the same manner as if he were not the Government Pleader.

Form of Memorandum referred to in the first of the above Rules.

Title of the suit, &c.

I, A. B., Government Pleader, appear on behalf of the Secretary of State for India in Council (*or*, the Government of Bengal, *or*, *as the case may be*), respondent (*or*, *&c.*) in the suit:

or, on behalf of the Government (which, under section 70 of Act VIII of 1859, has undertaken the defence of the suit), respondent (*or*, *&c.*) in the suit.

FEES OF PLEADERS, &c.

Rules made by the High Court of Judicature at Fort William in Bengal in pursuance of Act XX of 1865, *section* 37, *for fixing and regulating the fees payable by the unsuccessful party in respect of the fees of his adversary's pleader in proceedings in any court of civil judicature subordinate to the said High Court.*—(*C. O.*, 1866, *No.* 22, *June* 13*th.*)

The accompanying rules passed by the High Court under section 37, Act XX of 1865, are hereby circulated for the guidance of the Civil Judges subordinate to them in all proceedings held on and after the 1st July ensuing [1866], from which date the law above-mentioned will come into operation. The Court expect that civil officers will invariably act up to the letter and spirit of the rules now forwarded.

In pursuance of section 37, Act XX of 1865, the High Court is pleased to direct that, from and after the 1st day of July 1866, the sums which shall be payable by an unsuccessful party in any suit or proceeding in the subordinate civil courts in respect of the fees of his adversary's pleader shall

be calculated at the rates specified in the following scale, that is to say :—

Rule 1.—In suits for the *recovery of specific property or a share of specific property*, whether immoveable or moveable, or for the *breach of any contract, or for damages*—

If the amount or value of the property, debt or damages decreed shall not exceed Rs. 5,000, at 5 per cent. on the amount or value decreed.

If the amount or value shall exceed Rs. 5,000, and not exceed Rs. 20,000, on Rs. 5,000 at 5 per cent., and on the remainder at 2 per cent.

If the amount or value shall exceed Rs. 20,000, and not exceed Rs. 50,000, on Rs. 20,000 as above, and on the remainder at 1 per cent.

If the amount or value shall exceed Rs. 50,000, on Rs. 50,000 as above, and on the remainder at ½ per cent.

Provided that in no case shall the amount of any fee exceed Rs. 3,000.

Rule 2.—In suits for *injuries to the person or character of the plaintiff*, such as suits for *assaults or defamation*, or for *injuries to property*, or to *enforce rights* where the pecuniary value of such injury or right cannot be exactly defined, as in suits for interference with a *right to light or water*, or to enforce a *right of pre-emption*, or suits for the *partition of joint property*, where partition is improperly resisted, if the *plaintiff* succeed, the court may order the fee of the pleader for the plaintiff to be calculated with reference either to the amount decreed or according to the valuation of the suit, or according to such a sum, not exceeding the valuation, as the court shall think reasonable and shall fix with reference to the importance of the subject of the dispute. In any such case the amount of the pleader's fee shall be calculated according to the scale in Rule 1.

Rule 3.—If the suit be *dismissed for default or upon the merits*, or be decreed for the defendant, the *defendant's pleader's fee* shall be calculated according to the scale in Rule 1 on the whole value of the suit.

Rule 4.—If the suit shall be *decreed for the plaintiff* as to part only of his claim, and as to the remainder shall be dismissed or decreed for the defendant, the fees allowed to each party's pleader shall be fixed with reference to the value of that part of the claim in respect of which he shall

succeed, and shall be calculated according to the scale in Rule 1.

Rule 5.—If in any suit for *unliquidated damages the plaintiff* shall succeed as to the whole of his cause of action, but shall fail to recover the full amount of damages claimed, the defendant shall not be entitled to any allowance for a pleader's fee in respect of the difference between the amount of damages claimed and the amount recovered, unless the court shall be of opinion that the amount claimed for damages was unreasonable or excessive, and shall, for that or any other cause to be specified, direct that a fee for his pleader shall be allowed to the defendant.

If specially allowed, the amount of such fee shall be fixed with reference to the amount of damages disallowed to the plaintiff, and shall be calculated according to the scale in Rule 1.

Rule 6.—If several defendants who have a joint or common interest succeed upon a *joint defence*, or upon separate defences substantially the same, *not more than one pleader's fee* shall be allowed, unless the court shall otherwise order for a reason which shall be recorded. If only one fee be allowed, the court shall direct to which of the defendants it shall be paid, or shall apportion it among the several defendants in such manner as the court shall think fit.

Rule 7.—If several defendants who have separate interests set up separate and *distinct defences* and succeed thereon, a fee for one pleader for each of the defendants who shall appear by a separate pleader may be allowed in respect of his separate interest. Such fee, if allowed, shall be calculated with reference to the value of the separate interest of such defendant, according to the scale in Rule 1.

Rule 8.—(*C. O.*, 1872, *No.* 14, *April 9th.*) The amount in respect of the fee of an adversary's pleader, when allowed in any *miscellaneous proceeding*, or for any other matter than that of appearing, acting, or pleading in a suit prior to decree, shall be fixed by the court according to the following scale, viz:—

A fee not exceeding Rs. 80 in the court of a Judge or Subordinate Judge.

A fee not exceeding Rs. 16 in the court of a Moonsif in suits of amount or value exceeding Rs. 300.

A fee not exceeding Rs. 4 in the court of a Moonsif in suits of amount or value not exceeding Rs. 300.

[All Judges of Courts of Small Causes constituted under Act XI of 1865 are hereby informed that the rules prescribed by the High Court in pursuance of section 37 of Act XX of 1865, so far as they are applicable, extend to Courts of Small Causes.]

The following special rule is laid down for Small Cause Courts in the mofussil:—

Rule 8*A*. (*Small Cause Courts only.*)

The amount in respect of the fee of an adversary's pleader, when allowed in any miscellaneous proceeding, or for any other matter than that of appearing, acting, or pleading in a suit prior to decree, shall be fixed by the court according to the following scale, viz:—

[One rupee to six rupees in proceedings connected with cases not exceeding Rs. 500 in value.—(*C. O.*, 1866, *No.* 32, *August* 15*th.*)]

[The High Court, observing [1867] in many *miscellaneous appeals* that the subordinate courts have not awarded costs in respect of pleaders' fees in accordance with *Rule* 8 laid down in the general rules made by the High Court in pursuance of section 37, Act XX of 1865, or that the fees, if awarded, have not been stated in the final order of the court, calls the attention of all Subordinate Judges to the rule in question, and directs that, except in cases where it may be ordered that each party shall pay his own costs, a specific sum be awarded as payable on account of the adversary's pleader's fee; and that the award of such sum be distinctly recorded at the foot of the order, with the other costs, if any, incurred by the parties respectively.—(*C. O.*, 1867, *No.* 23, *July* 29*th.*)]

[The High Court have observed [1868] that subordinate civil courts, with few exceptions, omit to enter costs in their orders in *miscellaneous cases*, stating sometimes, as a reason for the omission, that the pleader's fees have not been awarded for want of any specification of the value of the claim; and that in the few exceptional cases in which the pleader's fees are entered in the order, the computation appears to have been made by a mohurir or other ministerial officer with reference to the value of the case, while the officer presiding in the court is required specifically to fix the fees at the hearing. The Court therefore request the attention of all subordinate courts to the injunction contained in circular order No. 22 of the 13th of June 1866,

that "civil officers will invariably act up to the letter and spirit of the rule" therewith circulated for regulating and fixing the fees payable in subordinate courts, and more particularly to section 8 of those rules, which enjoins that "the amount of the fee of an adversary's pleader, when allowed in any miscellaneous proceeding, or for any other matter than that of appearing, acting, or pleading in a suit prior to decree, shall be fixed by the court," &c.—(*C. O.*, 1868, *No.* 6, *May 22nd.*)]

Rule 9.—In every suit in any court of original jurisdiction which shall be *undefended*, the amount to be paid as the fee of the adversary's pleaders shall be calculated at one-half the sum at which it would have been charged had the suit been defended.

Rule 10.—If a *review be rejected after summoning the opposite party*, or if, after the admission of a review, the former judgment be upheld, the pleader's fee, if allowed to the successful party in the review, shall be fixed by the court at an amount which shall not in any case exceed one-half of the amount allowed by these rules in case of an original decree.

Rule 11.—If after the admission of a *review the former judgment be reversed*, the fee of the pleader in respect of the review, if allowed to the party who succeeds in the review, shall not exceed one-half the amount allowed by these rules in cases of an original decree. The fee allowed in respect of the review will be irrespective of any pleader's fee which may be included in any costs in respect of the original suit which may be adjudged to the successful party by the judgment in review.

Rule 12.—The amount to be allowed on account of the fee of an adversary's pleader in *appeals* shall be calculated on the same scale as in original suits, and the principles of the above rules as to original suits shall be applied as nearly as may be to appeals.

Rule 13.—When the *interest of several appellants is joint*, not more than one pleader's fee shall be allowed, unless the court shall otherwise order for a reason to be recorded. If one fee only be allowed, the court shall direct to which of the appellants it shall be paid, or shall apportion it amongst the several appellants in such proportions as it shall think fit.

Rule 14.—If several respondents in *one appeal* appear by separate *pleaders*, in determining whether several pleaders' fees shall be allowed, the court shall be guided by the principles laid down in Rules 6 and 7.

Rule 15.—If in any instance the payment of fees according to the preceding rules shall not appear to the court to be just and equitable, the *court may exercise its discretion* in charging the fee of the adversary's pleader in such manner as may appear just and equitable; but in every case, when an allowance is made for a pleader's fee, the amount shall be calculated according to the scale in Rule 1, or according to Rule 8, as the case may be.

Provided that, if under the provisions of section 351, Act VIII of 1859, the decree of a lower court be reversed on appeal, and the case be *remanded* to the lower court to be tried upon the merits, the lower court on passing its decree may allow to the successful party such a sum as the court shall consider to be reasonable, not exceeding half the amount calculated according to the scale in Rule 1 on account of his pleader's fee in respect of the re-hearing, in addition to the full amount of his pleader's fee calculated according to that scale.

Provided also, that if an *appeal* be preferred *against the decree passed on remand*, the fee, if any, allowed by the appellate court to the party succeeding in that appeal shall not, unless for a special reason to be recorded, be less than one-fourth nor more than half of the amount calculated at the rate mentioned in Rule 1, if by the decree of the appellate court remanding the case the same party shall have been allowed a full pleader's fee in respect of the former appeal in the suit either absolutely or conditionally upon his succeeding upon the remand.

Provided also, that if under section 354, Act VIII of 1859, *an issue be framed and referred by the appellate court for trial by the lower court*, the appellate court may, if it think proper, allow to the party who shall succeed in the appeal such a sum as the court shall consider reasonable, not exceeding half the amount calculated at the rate mentioned in Rule 1 for his pleader's fee in respect of the trial of the issue in the lower court, in addition to a full fee, in respect of the appeal, calculated at that rate.

Ministerial Establishment for Additional Moonsifs and Additional Subordinate Judges.

As a general rule, when the entertainment of an Additional Moonsif is sanctioned, the District Judge will be at liberty, without reference to Government, to entertain for him an establishment on the same scale as that of other Moonsifs, it being understood that the District Judges will always study economy and reduce the establishment according to their discretion, if advisable, in particular instances.—(*C. M.*, 1872, *No.* 2, *January* 24*th. Bengal Government's No.* 6663 *of* 28*th December* 1871, *to High Court.*)

Same order extended to Additional Subordinate Judges.—(*C. M.*, 1873, *No.* 10, *May* 29*th. Bengal Government's No.* 2341, 12*th May* 1873, *to High Court.*)

Certificates to Subordinates.

The Governor-General in Council has recently had under consideration a case in which a public officer, the Head of a Department, in granting a certificate to one of his subordinates, suppressed the true reason for which the subordinate had been removed from his appointment. Such an omission may obviously be injurious to the interests of the public service. I am therefore directed to draw attention to the subject, and to request the issue of orders to all public officers, warning them to be careful in giving certificates to their subordinates, to state the whole truth in respect of character and cause of dismissal or resignation of appointment.—(*C. M.*, 1873, *No.* 17, *November* 4*th, forwarding circular from Government of India to all local Administrations.*)

Punkah-pullers in Moonsifs' Offices.

Moonsifs shall be placed on the same footing as Deputy Magistrates and Deputy Collectors in respect to the indulgence of punkahs and punkah-pullers in the hot season.—(*C. O.*, 1866, *No.* 42, *October* 2*nd. Bengal Government's No.* 2020*T*, 6*th September* 1866, *to High Court.*)

Candidates for ministerial employment.

(*C. O.*, 1865, *No.* 17, *August* 24*th.*)

The following rules are circulated by the High Court, at the request of the Lieutenant-Governor of Bengal, for the

guidance of judicial officers of every grade in testing the qualifications of candidates for ministerial employment in mofussil offices. The rules should be circulated throughout every district, and their observance on all officers should be strictly enforced.

2. Zillah Judges are requested to report on the working of these rules in their annual reports.

3. The Government resolution of the 30th January 1856, alluded to in Rule 1, is reproduced for easy reference.

Orders for the admission of Candidates for Ministerial employment in Mofussil Offices.

No apprentice or umedwar shall be admitted to work in any mofussil office, except in conformity with the Government resolution of 30th January 1856. The employment of apprentices without the express and formal sanction of the head of the office is absolutely prohibited.

2. Whenever a vacancy occurs, or is about to occur, either in an apprenticeship or in a paid appointment, a notice of the fact should be suspended in some prominent place in the office, and a date, which shall not be less than 15 days after the issue of the notice, shall be fixed for filling up the vacancy.

3. No person shall be appointed an apprentice whose age exceeds twenty years.

4. The number of apprentices shall not exceed the following scale:—

In the office of Zillah or Additional Judge ...	5	apprentices.
In the office of Judge of a Small Cause Court or Subordinate Judge	3	"
In the office of Moonsif or Registrar of a Small Cause Court	2	"

5. If on the expiry of an apprenticeship of five years any apprentice has failed to obtain a paid appointment, he shall not be retained in the office in any capacity.

6. On the day fixed for filling up a vacancy, the head of the office shall see and examine all applicants and their certificates, and record a proceeding stating that he has done so, noting in detail the claims of the three or four more eligible candidates, and giving his reasons for the selection ultimately made.

7. This proceeding, together with the applications and any copies of certificates filed, &c., should be made

into a regular record, and be available for reference in case of any appeal being made against the appointment.

8. All appointments of Rs. 10 a month or upwards, made by a Moonsif or Subordinate Judge, should be reported monthly to the Zillah Judge for information, in accordance with the law* and orders† in force, and the Judge should fill up with his own hand the column reserved for remarks, sending a copy of such remarks for his subordinate's guidance.

* Section 12, Act XXV of 1837.

† Circular No. 178, dated 25th February 1842.

9. The above orders are to be applicable not only to permanent appointments, but also to acting appointments vacant, or likely to be vacant, for three months or upwards.

10. All apprentices who have not been appointed in conformity with the Government resolution of the 30th January 1856, all in excess of *five* in any Judge's office, or of *three* in any Small Cause Court Judge's or Subordinate Judge's office, and of *two* in any Moonsif's office, and all who have been employed as apprentices for more than five years are to be forthwith removed.

Dated Fort William, the 30th January 1856.

RESOLUTION—By the Government of Bengal.

READ again a letter from the Director of Public Instruction, dated the 5th ultimo, enclosing a memorandum drawn up by Mr. Pratt regarding the system of employing apprentices in the Government offices in the mofussil.

Read a letter addressed to the Board of Revenue on the 31st ultimo, forwarding the above.

Read a communication from the Board dated the 12th instant.

The Lieutenant-Governor regards the object which Mr. Pratt has in view as one which it is most desirable to obtain, but he is not at present prepared to go further for the purpose of attaining it than to prescribe a general rule that no apprentice shall be admitted into any office without the express sanction of the head of the office, to be recorded in a register to be kept for the purpose. This register shall record the name and age of the apprentice; the kind and extent of education which he has received; to which of the amlah in the office he is related, or by which of them recommended; with any further particulars that it may seem desirable to the head of the office to record. Every apprentice admitted shall likewise receive a perwannah signed by the head of the office, specifying that he is admitted as an apprentice.

The results to be secured by the above rule will necessarily depend much upon the manner and the spirit in which it is worked by the several heads of offices. The Lieutenant-Governor desires therefore to signify his hope and expectation that every officer will feel himself under a strong obligation to evince a real interest in regulating by means of the rule the admission of apprentices into the public offices, and that in every instance the head of the office will satisfy himself by personal examination and enquiry of the respectability of the candidate for admission, and also that he possesses a fair extent of education.

The Lieutenant-Governor would further inculcate upon officers the propriety of encouraging the acquirement of English by giving a preference to candidates who have received an English education, if in other respects they are as eligible as other candidates who do not know English.

The Lieutenant-Governor thinks it desirable, however, on this point to leave a full discretion in the hands of the local officers, informing them merely of the general views and wishes of Government, and trusting to them to give effect to them to the utmost extent that they may deem advisable and right, with reference to local circumstances or individual claims. Irrespective of the general reasons which make the Lieutenant-Governor at all times desirous to fetter, as little as possible, the discretion of the local authorities in matters of this kind, he is strongly of opinion that in this particular matter it would neither be practicable nor wise to attempt to act altogether independently of, and without reference to, the head native amlah.

As a general rule, the Lieutenant-Governor considers it a proper and a judicious proceeding that the opinion of the serishtadar of an office should be consulted in regard to the entertainment of new amlah, including apprentices, in an office for the correct, punctual, and honest working of which he is directly responsible; and the Lieutenant-Governor is satisfied that in the great majority of cases, if the covenanted head of the office exhibits a true interest in the working of his office, and at the same time evinces a proper consideration and respect to the principal uncovenanted servants in the office, he will receive cordial support at their hands, and will find them just as anxious as he is himself to introduce none but respectable and educated young men into the office. The Commissioners of Revenue and Circuit will take occasion, on visiting the different stations of their divisions, to satisfy themselves that proper attention is paid by the district officers to the admission of apprentices into their serishtas.

Acting Officers to be reported upon within six months from date of nomination.

Circular Order No. 12, *dated the* 1*st January* 1830.—The Courts of Sudder Dewany and Nizamut Adawlut having reason to believe that a practice prevails in some districts of keeping the *amlah* and other officers on the establishment of the Judges and

Magistrates in acting capacities, without reporting them for confirmation to the superior authorities until after the lapse of very long periods, and being of opinion that such practice is highly objectionable, the civil and criminal authorities are hereby required, on all future occasions on which they may nominate an individual to act in any situation in their court, whose confirmation in the same may require the sanction of superior authority, to make a report to such authority as to the fitness of the officiating person within the period of six months from the date of his original nomination.

Serishtadar not to sit in court-room.

The Court having reason to believe that many Judges of all grades sit in court with their serishtadars in attendance, think fit to call the attention of all judicial officers to the prejudicial effect of such a course.

First.—It tends to give an erroneous impression of the position and influence of the serishtadar.

Secondly.—By the serishtadar being kept all day in attendance on the Judge, the office, the subordinate amlah, and the details of business lose almost entirely the benefit of his presumably superior capacity and experience.

2. The Court accordingly forbid the employment of the serishtadar on the bench, and remind all Civil Judges of the regular courts that his proper place is in the serishta, for the management of which he is more immediately responsible.—(*C. O.*, 1871, *No.* 27, *October 4th.*)

TRANSLATORS.

Translators to be chiefly employed in the duties for which their appointment was created.

Translators should be employed in the first place, and chiefly, on those duties for which their appointment was created, it being, however, open to the Judges discretionally to employ them in other duties after their primary duties are performed, and according to the exigencies of his office.

Revision of translations into the vernacular.

The Court take this opportunity of recommending to Judges the revision of all translations from English into the vernacular, which at present are frequently found to be objectionably performed, so as to be often unintelligible.—(*C. O.*, 1857, *No.* 99, *June 26th.*)

Pleadings to be translated verbatim et literatim. English translation to be filed with nathi.

Translators are to translate the pleadings *verbatim et literatim* according to the practice observed by the translators of this [the Sudder] Court, so that, in the event of an appeal being preferred to this Court, the translation of those pleadings need not be made again.—(*C. O.*, 1858, *No.* 115, *March 29th.*)

AMEENS (CIVIL COURT) OR COMMISSIONERS.

Number, Classification, and Distribution of Ameens.

Number of ameens.

Commissions for local investigations under section 180 of the Civil Procedure Code may issue only to persons formally appointed civil court ameens, and therefore having a permanent "status" as commissioners of the courts. The employment by civil courts of occasional commissioners, known under the common designation of "Ticca Ameens," is strictly prohibited.

If it should appear to the Judge of any district that there should be an increase in the number of authorized civil court ameens available for employment, he may submit a proposal to that effect. But unless sufficient cause can be shown for it, any such proposal to augment the staff will not be entertained.—(*C. O.*, 1870, *No.* 28, *September 8th.*)

Court's instructions for Ameen's guidance in the order deputing him.

Instructions for ameens' guidance.

It is understood that hitherto the completion of ameens' reports has been much retarded from the imperfect and loose orders recorded for their guidance. In future, before issuing orders for the employment of an ameen, the several courts will be careful to consider the exact nature of the work to be done, the means to which the ameen is to have recourse for doing it, and the time it should occupy; and they will instruct him accordingly. Sometimes it may be possible for the court to indicate to the parties concerned the date from which the ameen's proceedings are to commence; in other cases the ameen may have to notify this date; but, under any circumstances, it should be distinctly understood that the ameen is not to defer his proceedings owing to the absence of a party to whom notice has been given.—(*C. O.*, 1857, *No.* 105, *November 6th.*)

'The High Court have frequently observed that cases remain for an unreasonably long time pending in the mofussil courts for the undelivered reports of ameens entrusted with the duty of local investigations, and the delay on the part of these officers is commonly attributed to the great number of cases with which they are charged. The court has now ample proof before it that very many of the cases referred by Judges to ameens for local inquiry never should have been so referred. With a view therefore of obviating the delay which occurs through a course of procedure not authorized by law, the High Court deem it proper to impress upon the subordinate courts of every grade that local investigations by ameens should only be ordered in cases where they are absolutely required by the courts on subordinate points for a determination of the main issue in the case; for instance, in cases in which it is necessary to ascertain by measurement disputed areas of land, or to ascertain whether particular lands are identical with lands detailed in documents when the fact is disputed, and in such like instances. When, however, any fact can be elicited by evidence, that evidence should be heard by the court itself, and not by an ameen. With a view, too, both of shortening the trial in many cases, and of assisting the courts in the examination of witnesses, it will be well if, when a map or measurement of the locality appears from the issues to be absolutely necessary, orders to prepare it are passed at the time of the fixing of issues. The map and the report of the ameen can then be tested by the examination of the witnesses, and the courts will be in a better position to conduct this examination than they are under the present system. If these instructions be carried out, the High Court believe that ameens being only employed in cases in which their services are essential, the mofussil courts will be enabled to dispose of suits more promptly and satisfactorily, and litigants will in many cases be saved the extra expense entailed by local investigations.—(*C. O.*, 1866, *No.* 41, *October 2nd.*)

Cases on appeal should not be remanded for ameens' reports. See under PROCEDURE—Appeals—Remand.—(*C. O.*, 1866, *No.* 36, *September 12th.*)

Circular Order, 1870, *No.* 25, *August 25th.*—Very numerous cases have come before the High Court in which it has appeared that the power vested by law in the civil

courts of directing investigations by commissioners has been injudiciously exercised in the subjoined particulars, namely:—

1*st.*—The application for such inquiry has been granted as a matter of course, whether the nature of the case made such desirable or not.

2*nd.*—The instructions to the ameen have not been sufficiently precise.

3*rd.*—A reasonable time has not been defined within which the return is to be made, or the ameen has been allowed to exceed such time without good reason.

4*th.*—The ameens have been permitted to go into matters not referred to them.

5*th.*—The ameen's report, or the objections to it, have not been properly dealt with.

The following observations and general rules are therefore issued and laid down for the guidance of the civil courts subordinate to the High Court:—

The responsibility of ordering an inquiry under section 180, Code of Civil Procedure, rests entirely with the court before which the suit is pending, and which may order such inquiry when it deems a local investigation to be necessary or proper for the purpose of elucidating the matters in dispute, or of ascertaining the amount of any mesne profits or damages.

The court is therefore to consider, when it is moved to order any such inquiry, whether the nature of the case calls for that particular mode of inquiry; whether the application has been made at a proper stage of the proceedings; whether the importance of the case warrants that expense being imposed upon the parties; and whether such inquiry may not be attended with a delay which will counterbalance the advantage to be derived from it.

If the inquiry be ordered, it is necessary to define the points on which the report of the ameen is required, and upon which it is to be evidence; and points ought usually to be excluded which can conveniently, and ought to, be substantiated by the parties by evidence at the trial.

A time should then be fixed for making the return, and it should be so fixed that the ameen may reasonably be expected to comply exactly with the order; and for this purpose the court may ascertain what the ameen's engagements are and arrange accordingly; and it is the especial duty of the Zillah Judge, by attention to the weekly returns of work submitted by the ameens [see above], to take care that no improper delay occurs in executing commissions entrusted to them.

If the instructions have been precise, and the ameens understand their business, they will usually keep within the bounds which have been set for them.

It is a very common practice for the courts to receive, and even to invite, formal exceptions and objections to the report. It will be observed that the 180th section makes no provision for any such thing;—"but it shall be competent to the court, or to the parties to the suit, or any of them, with the permission of the court, to examine the commissioner personally in open court touching any of the matters referred to him or mentioned in his report, or the manner in which he may have conducted the investigation."

The practice of encouraging petitions of objection leads to the making of charges, frequently quite unfounded, of partiality or corruption against the ameens. Vakeels who lend themselves to preferring such charges ought to be made to understand that they will have to prove them, and they should not be entertained unless proof of their correctness is tendered. The report of a commissioner should be treated, as the Code points out, as evidence in the cause, and should be subject, like the other evidence therein, to oral comment by the pleaders, and, generally speaking, to that only.

In order to a more careful observance of these principles by the subordinate civil courts, the following general rules are now prescribed:—

I. Whenever a subordinate civil court, either of its own motion, or on the application of any party, directs a local inquiry, or an inquiry into accounts, the order for such inquiry shall be drawn up in the handwriting of the Judge of such court, and shall contain the following matters:—

1*st*.—Whether the inquiry is directed by the court *proprio motu* or upon an application, and if on an application, from which party.

2*nd.*—What the point is which requires elucidation or ascertainment in that particular way.

3*rd.*—Why such matter could not be proved or ascertained in the ordinary way by producing documents at the proper time and witnesses at the trial.

4*th.*—The instructions given to the commissioner.

II. Where the court issuing such commission is subordinate to the Zillah Judge, a copy of such order shall be forthwith submitted to him, and he will note thereon the fact of complete or partial compliance with the foregoing rule.

[The intention of this Rule, II, which requires subordinate civil courts issuing a commission of inquiry to submit a copy of the same to the Zillah Judge, was to afford the Zillah Judge an opportunity of satisfying himself that the general directions given in Rule I had been properly attended to, and not as in any way necessitating the Judge's sanction to the local or other inquiry before it could be commenced. On the contrary, the responsibility of ordering an inquiry under section 180 of the Civil Procedure Code rests entirely with the court before which the suit is pending.—(*C. O.*, 1872, *No.* 4, *February 5th.*)]

III. In all orders for investigation by a commissioner under section 180, Code of Civil Procedure, the present circular order shall be cited as well as the section of the Code.

IV. The Zillah Judge in his annual report will certify the mode in which the several Subordinate Judges have complied with these rules.—(*C. O.*, 1870, *No.* 25, *August 25th.*)

Two or three ameens in succession not to be deputed to investigate the same matter.

All the courts must distinctly understand that the Sudder Court cannot countenance the pernicious practice, not unseldom [1857] followed, of deputing two or three ameens in succession to investigate the same matter. This very objectionable course almost invariably arises from the original instructions being loosely given, and the first ameen's execution of them being inadequately superintended.

Employment of ameens may be greatly reduced.

It is believed that the employment of ameens by Moonsifs may be avoided in many cases in which they are now inconsiderately employed. Moonsifs' courts are comparatively near the subject of dispute, and witnesses whom it may be necessary to examine should be summoned and examined by Moonsifs themselves.

Ameen's diary and register.

The District Judge will furnish to the ameen two blank books, which must be kept up according to the following forms:—

No. 1.—Diary.

Month.	Day.	Short Memorandum of business done daily, to be recorded daily.

No. 2.—Register.

1	2	3	4	5	6	7	8	9	10
No.	Date of receipt of order.	Date of order.	Court issuing it.	Nature of business.	Names of party or parties.	Date of commencement of duty.	Time fixed for performing duty.	Date of report of completion.	Remarks.

Charges for Ameens.

Daily rate chargeable.

The Judge's very careful attention is requested to the provisions of section 8 of the Act. The *daily rate* chargeable for the employment of an ameen is fixed at three rupees. In estimating the time which any duty about to be assigned to an ameen may be expected to occupy, every court will, as near as may be, determine the time within which the business once undertaken should be completed.—(*C. O.*, 1857, *No.* 105, *November 6th.*)

[Any surplus remaining after payment of those expenses will be repaid to the litigants, and an account with this object should always be required from the nazir.—(*See C. O. No.* 164, *4th July* 1860.)]

Prepayment required.

The whole expense in each inquiry to be levied must be prepaid at the rate of three rupees a day. [Where the circumstances of several suits are such that they can conveniently be disposed of in one inquiry, the expenses shall equally be divided among the several suits. Under the new Court Fee Rules, however (rules under clause 1, section 20 of Act VII of 1870, Parts II and III, article 2), the fee for the *commission* must be levied in each case.—(*With C. M.*, 1874, *No.* 12, *May 8th.*)] From the accumulations of this fund* the fixed salaries of the ameens have to be paid; and it has been distinctly intimated by the

* The Civil Court Ameens' Fund no longer exists, all ameens' fees being now credited to imperial revenue. The High Court, at the request of the Government of India, Financial Department, exercises control over expenditure connected with the employment of ameens.—(*Vide High Court's C. O., No.* 12, *8th April* 1872.)

Government that no portion of the charge to be incurred by the appointment of ameens can be defrayed by the State.—(*C. O.*, 1857, *No.* 105, *November 6th.*) Ameens' travelling allowance.

The salaries of two grades of ameenships, viz. Rs. 70 and Rs. 50 per mensem, are intended to support the ameens, but are not sufficient to defray in addition the necessary charges incurred by them in travelling to and from the scene of inquiry; and it is not to be presumed that officers of the class under consideration could perform their journeys on foot with sufficient celerity; and as water carriage is not available in all districts and at all times of the year, these journeys must be performed sometimes in other ways than on foot or by boat.

The Court are accordingly pleased to authorize you in all cases in which a local investigation is necessary of the nature described in clause 3, section 5, Act XII of 1856, to charge the parties to a suit requiring the services of an ameen with his travelling expenses either by land or water; these expenses must be calculated with reference to the distance to be travelled and the means by which the journey can be performed.

They can only, however, be charged where actually necessary, and must be deposited in addition to the Rs. 3 per diem (including the days occupied in transit) which is levied from suitors and credited to Government as the cost of the employment of ameens. But the deposit for travelling expenses must not be credited to the Ameens' Fund, but paid directly to the ameen himself.—(*C. O.*, 1863, *No.* 30, *October 10th.*)

The cost of the postage of packages containing ameens' reports should be estimated for, and should be deposited by parties to suits in the same manner as other costs for local inquiries. They are not to be sent under frank. Such papers cannot be considered to concern any public matter, such as to admit of their being sent post free on Her Majesty's service.—(*C. O.*, 1865, *No.* 20, *September 4th.*) Postage charges on ameens' papers.

On any given duty being by an ameen closed, the ameen will specially report the time it occupied, and each court will at once consider and record the amount which on account of the ameen's employment is chargeable to costs of suit. If in any case the estimated pre-payment be found to exceed the actual charge, the excess should be refunded. Ameen's completion report.

Much care will also be necessary to confine within exact limits the fees leviable by section 9, Act XII of 1856 in sale cases. The pre-payment made in those cases, the District Fees in sale cases.

Judge will observe, is intended to provide for the ameens' remuneration when from any cause a sale may not take effect. In this case also, on the termination of the proceedings, the cost incurred by the ameen's deputation should be considered. If the whole sum chargeable on behalf of the ameen, at three rupees a day, *do not exceed* the deduction made from the proceeds of sale at the rate of [one anna in the rupee, 6¼ per cent.,*] the latter sum will be wholly credited to Government, and the estimated sum paid in anticipation of the sale will be refunded; if the sum chargeable for the time of the ameen's employment *exceed* the percentage receivable from the sale, then only so much can be refunded as, taking the two items together, will leave the exact cost of the ameen's deputation to be covered. If no sale at all occur, the cost of the ameen's deputation must be wholly covered by the pre-payment.—(*C. O.*, 1857, *No.* 105, *November 6th.*)

Thakbust and Khetbut Maps.

The High Court are pleased to direct that outline thakbust maps be not received as evidence unless accompanied by the *survey* map of the locality.

2. But this order is not to exclude the reception of khetbut maps when produced for the purpose of showing detailed internal measurements or field surveys.

3. The Court think it proper also to impress on all judicial officers how important it is that copies of survey maps should be made only by persons actually acquainted with drafting and surveying.—(*C. O.*, 1874, *No.* 3, *February 9th.*)

Rules for Measurements and Plans by Ameens.

The Court are pleased to prescribe [*C. O.*, 1875, *No.* 1, *January 30th*] the following rules for the guidance of civil court ameens in carrying out local inquiries involving the survey and measurement of lands by order of a civil court. District Judges are requested to see that these instructions are exactly obeyed:—

1. All measurements must be made with chain and compass. The chain to be 30 feet in length.

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* But see under "Procedure, sales" (*C. O.*, 1873, *No.* 19, *August 6th*), for the rates now leviable.

2. The work must be plotted to scale, and the scale to be used by civil court ameens is the brass thakbust scale, 330 feet to the inch, or 16 inches to the mile.

3. This scale is made by dividing four inches into eleven equal parts, each of which will therefore be equal to a russee or beegha-side of 120 feet. Each of these parts sub-divided into four represents the measuring chain of 30 feet, or 5 cottahs.

4. If the area of the land to be measured is too large to be conveniently shown on the 16-inch scale, the scale may be reduced to one-half. If the plot of land be very small the scale can be increased to double, *i.e.*, 32 inches to the mile. For practical purposes, the scale of 8 inches to the mile is the smallest scale civil court ameens can safely use with such instruments as they have to employ. The scales enumerated bear due proportion to the professional survey scale and facilitate comparison with the professional survey maps.*

5. The starting point and every bearing and measurement taken must be recorded as the measurement proceeds in a field-book. This field-book must invariably be submitted with the map prepared, and in it any prominent land-marks adjacent to or on the line of measurement should be noticed.

6. In order to secure greater clearness and uniformity, it is further directed that all water, whether running or standing, is to be indicated in blue, the land in dispute to be shaded yellow, and all writing on the maps to be so made as to be read when the map is held with the north side uppermost.

Miscellaneous Rules.

C. O., 1858, *No.* 113, *March* 12*th.*

No security is to be required from the ameens. **Security.**

No seals are required for their offices. **Seals.**

The ameens may be supplied with stationery from the office. **Stationery**

Where boats are necessary for the use of the ameens when employed in the interior, their hire is to be treated as **Boats.**

* In working from professional survey maps, it will be borne in mind that 20 Gunter's chains, or 1,320 feet, are generally, if not universally, represented by 1 inch. Each inch of a survey village map, therefore, is equal to 11 russees, and each Gunter's chain to 11 cottahs.

an extra charge to be defrayed by the parties concerned. [Compare above on "*charges for ameens.*"]

Employment of nazir in the interior.

When a nazir is personally employed in the interior for any of the purposes mentioned in Act XII of 1856, his necessary expenses are to be paid for on the principle of section 9; his personal deputation is not to be resorted to but under necessity; and otherwise he should transact the duties appointed him by means of peons, whose pay will be an extra charge upon the parties concerned.

Instruments.

With regard to the purchase of instruments, the Court would advise District Judges applying to the Government direct whenever they deem it desirable that such expenses should be incurred, as it seems to the Court unreasonable to expect ameens to supply themselves with their instruments.

Pension to ameens.

The eligibility of ameens appointed under Act XII of 1856 to pensions is declared by extract, paragraph 68, of despatch from the Right Hon'ble the Secretary of State for India, No. 2 of 1858, dated the 6th January:—

"As it appears that civil court ameens appointed under Act XII of 1856 are remunerated by fixed monthly salaries, and that all fees connected with their employment are credited to Government, I see no reason for withholding from them the same benefit as regards pensions as is accorded to other members of the Uncovenanted Civil Service"—(*C. O.*, 1859, *No.* 134, *April 9th*)

Returns and Accounts relating to Civil Court Ameens.

The Court request (*C. O.*, 1872, *No.* 12, *April 8th*) that annual* returns may be made by each District Judge and Judicial Commissioner of the receipts and disbursements on account of civil court ameens and other commissioners appointed under sections 180 and 181, Act VIII of 1859, in connection with his own court and the courts subordinate thereto. The returns should include all money received and credited and all payments made on account of ameens' fees or

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* Originally quarterly returns. Annual returns substituted by C. M., 1875, No. 2, January 28th.

For financial year according to C. M., 1875, No. 2, January 28th. A similar statement required for the calendar year by C. O., 1874, No. 14, June 13th; and so also in C. O., 1865, No. 2, February 13th.

remuneration of commissioners, whether appointed under Act XII of 1856 or temporarily employed, but should not include boat-hire or other travelling expenses which are payable to the officer direct.

At the foot of the statement, and after the total of the expenditure on account of *salaries*, an addition should be made of 10 per cent. on account of *pensions*, as expressly desired by the Government of India.

The Court will expect these returns to be carefully prepared and promptly submitted. A similar monthly return will be furnished by the Accountant General, with which the local returns now prescribed will be checked.

Annual Statement showing receipts and disbursements on account of the employment of Ameens in the District of during 18

Name of Court.	Receipts on account of employment of ameens permanently entertained.	Disbursements on account of employment of ameens permanently entertained.	Receipts on account of ameens temporarily employed.	Disbursements on account of ameens temporarily employed.	Amount received as fees paid for the employment of Moonsifs as commissioners.	Ameens permanently employed, 1st and 2nd Grade.	Remarks.

Annual Statement C, showing values of the different classes of suits in which local enquiry was ordered during the year.
(*Prescribed in C. O.* 1874, *No.* 14, *June* 13*th.*)

Scale of Values.	No.	Aggregate value.	Average value.	Aggregate cost of local enquiry only.	Average cost of local enquiry.	Average time occupied in enquiry.
1	2	2	4	5	6	7
Rs.						
1 Not exceeding 5						
2 „ „ 20						
3 „ „ 50						
4 „ „ 100						
5 „ „ 500						
6 „ „ 1,000						
7 „ „ 1,000						
Total ...						

Daily Register of receipts on account of Civil Court Ameens.
District of

(*C. O.*, 1874, *No.* 11, *March* 14*th.*)

Date.	Court.	Nature of employment.	Ameen employed.	Time occupied.	Amount.	Remarks.

Daily Register of expenditure on account of Civil Court Ameens.
District of

(*C. O.*, 1874, *No.* 11, *March* 14*th.*)

Date.	Nature of expenditure.	Amount.	Remarks.

The Court having reason to believe that the column relating to ameens' fees in the statement dealing with these and other matters, as well as the column showing ameens' salaries in cognate statement (*see* under ANNUAL REPORTS and STATEMENTS), are not always prepared correctly, are pleased to circulate the following instructions for general observance in the preparation of the columns in question:—

The returns should include all money received on account of ameens' fees, whether the ameen be one appointed under the Act, or temporarily employed under sections 180 and 181, Act VIII of 1859. The fees should be invariably credited to Government, as required by section 9, Act XII of 1856, and shown in column 7, statement A; as also the amounts paid as salary, whether of a permanent or a temporary nature, which should be exhibited in column 4, statement B.—(*C. O.*, 1866, *No.* 44, *October* 10*th.*)

COURT FEES.

These rules having been confirmed by the local Government and sanctioned by the Governor-General in Council, were published in the *Calcutta Gazette*, and received the force of law on 25th February 1874 (Circulated with C. O., 1874, No. 10, March 7th):—

Fees for Processes (Civil Courts).

Chapter I.—*Rules framed by the High Court of Judicature at Fort William in Bengal in accordance with Clause I, Section* 20 *of the Court Fees' Act of* 1870, *declaring the FEES chargeable for serving and executing PROCESSES issued by the HIGH COURT IN ITS APPELLATE JURISDICTION, and by the other CIVIL and REVENUE COURTS* established within the limits of such jurisdiction.*

RULE I.—The fees exhibited in the following table shall be charged for serving and executing the several processes against which they are respectively ranged:—

Table of Fees.

[As there are no stamps of less denomination than one anna, fractions of an anna are to be abandoned under the rules.—(*C. O.*, 1874, *No.* 13, *May* 12*th.*)]

Part I.—In the HIGH COURT, Appellate Jurisdiction—

	Rs.	A.	P.
Article 1.—Every summons, subpœna, rule, notice, proclamation, injunction, or other order not elsewhere specified in this table, Part I	3	0	0
Article 2.—Every commission to make a local investigation, or to take evidence, or for any other purpose—			
(*a*) in respect of the commission	3	0	0
(*b*) in respect of the remuneration of the Commissioner, *i.e.*, person who is to execute the commission, *per diem*	Such sum as the Court may direct.		

Note.—A sum sufficient to cover the daily fee (*b*) for such period as may be fixed by the court for the purpose of executing the commission must be paid in addition to the fee (*a*) at the time when the commission is issued; and if the commission is not completely executed within the period so fixed, a further sum, sufficient to cover the daily fee (*b*) for the excess period extending from the end of that fixed period up to, and inclusive of, the date of the complete execution of the commission, must be paid before the commissioner's report or other return to the commission is used.

	Rs.	A.	P.
Article 3.—Every warrant for arrest of the person	3	0	0

* The heading of the rules shows that they have no application to revenue officers acting otherwise than in a judicial capacity, or, in other words, than when they act as Revenue Courts—(*C. O.*, 1874, *No.* 13, *May* 12*th.*)

PART II.—In the Courts of JUDGES and SUBORDINATE JUDGES, and in the REVENUE COURTS when the suit in the Revenue Courts in which the process is issued is valued at a sum exceeding Rs. 1,000—

	Rs.	A.	P.
Article 1.—Every summons, subpœna, notice, proclamation, injunction, or other order not elsewhere specified in this table, Part II	2	0	0

[The summons and subpœna to defendants (or respondents) and witnesses, on the issue of which a fee is provided by article 1, Parts II and III, are those contemplated by sections 48, 345, and 149 of the Code of Civil Procedure. They may in either case, therefore, by law contain the names of more than one defendant or witness, and the rules do not at present authorize the imposition of a separate fee on the respective copies prescribed by law to be served on the several persons named therein. If such fee be found necessary, the rule will be reconsidered.

This explanation does not apply to warrants to bring parties or witnesses before the court not being execution processes. In such cases a separate warrant will be issued against each person to be arrested, and a separate fee under article 1, Parts II and III, as for an "order not elsewhere specified in the table of fees," is to be charged for every such process.—(*Instructions and explanations issued by C. O.*, 1874, *No.* 13, *May* 12*th.*)]

	Rs.	A.	P.
Article 2.—Every commission to make a local investigation, or to take evidence, or for any other purpose—			
(*a*) in respect of the commission	2	0	0
(*b*) in respect of the remuneration of the commissioner, *i.e.*, person who is to execute the commission, *per diem*	3	0	0

Note.—A sum sufficient to cover the daily fee (*b*) for such period as may be fixed by the court for the purpose of executing the commission must be paid in addition to the fee (*a*) at the time when the commission is issued; and if the commission is not completely executed within the period so fixed, a further sum, sufficient to cover the daily fee (*b*) for the excess period extending from the end of that fixed period up to, and inclusive of, the date of the complete execution of the commission, must be paid before the commissioner's report or other return to the commission is used.

Article 2, Parts II and III, which prescribes the fees leviable in respect of a commission and of the remuneration of the commissioner, does not affect the rules [for commissions to examine absent witnesses—sec. 175, Civ. Proc. Code] laid down in circular order No. 10, dated 31st May 1873, except in so far as the rules direct the charge of a fee on every commission. Clause *a* applies to all commissions. Clause *b* only applies to the cases in which an officer of the court specially appointed and paid by Government is employed. The charge for the services of such an officer is properly a court fee payable to Government, which is therefore to be paid in stamps; and to such fees alone the rules apply.

But when the commissioner is a person not receiving pay from Government in respect of his employment as a commissioner, the rules of remuneration prescribed by circular order No. 10, above referred to, apply, and the commissioner will be paid in cash.

If the services of peons are required to serve any process which an ameen or commissioner is authorized to issue, a fee will be charged under the appropriate heading in the rules. The employment of peons as personal attendants on the commissioner was not contemplated and is not authorized.

The amount of fee when an officer is deputed to put a party in possession under a decree is to be determined, according to circumstances, either under article 1 or article 2, at the discretion of the court. If the delivery of possession is merely a formal act, and a peon can be employed, the fee as for an order would be charged under article 1; but if the transaction is more complicated (as involving enquiry or the making of an inventory, or the like), a commission to a superior officer would more properly issue, and a fee would be chargeable accordingly.

In the event of an excess deposit for a commission, or of a compromise rendering it unnecessary to execute the commission at all, the parties will be entitled to a refund in cash of the excess, or, as the case may be, of the whole of the fees deposited under clause *b*, but not of the fee under clause *a* in any case. The Accountant-General will issue separate instructions as to the form of voucher that will be necessary to obtain such refunds.—(*C. O.*, 1874, *No.* 13, *May 12th.*)

	Rs.	A.	P.
Article 3.—Every process of attachment of property by notice or proclamation	2	0	0

[Article 3, Parts II and III, prescribes the fee leviable on every process of attachment of property by notice or proclamation. One fee only is chargeable under this article for each process, irrespective of the number of items of property therein contained. Where copies have to be issued, no separate charge can be made under the rules as they stand.—(*C. O.*, 1874, *No.* 13, *May 12th*)]

	Rs.	A.	P.
Article 4.—Every process of attachment of property by actual seizure—			
(*c*) in respect of the warrant of attachment ...	2	0	0
(*d*) in respect of each man necessary to ensure safe custody who is left in possession, *per diem* ...	0	6	0

Note.—A sum sufficient to cover the daily fee (*d*) for a period of at least one month must be paid in addition to the fee (*c*) at the time when the process is obtained; and if the attachment is continued beyond the month, a further like sum for the next month must be paid two clear days before the expiration of the month which has been already paid for, and so on for each ensuing month, otherwise the man or men in possession will be removed. [Refunds, where properly claimable under this note, will be made in such mode as may be settled in communication with the Accountant-General.—(*C. O.*, 1874, *No.* 13, *May 12th.*)]

	Rs.	A.	P.
Article 5.—Every process of attachment by the arrest of the person. [Only processes against a defendant after judgment and in course of execution of a decree.—*C. O.*, 1874, *No.* 13, *May 12th.*)]	15	0	0

	Rs.	A.	P.
Article 6.—Every order for the sale of property—			
(*e*) in respect of the order of sale	2	0	0
(*f*) by way of poundage on the gross amount realized by the sale up to Rs. 1,000	2 per cent.		
together with a further fee on all excess of gross proceeds beyond Rs. 1,000 of	1 „		„

Note.—The portion (*e*) of this fee must be paid when the process is obtained, and the poundage (*f*) must be paid at the time of making the application for payment of the proceeds of sale out of court, as hereinafter provided.

PART III.—In the Courts of MOONSIFS and of SMALL CAUSES, and in the REVENUE COURTS, when Part II does not apply—

	Rs.	A.	P.
Article 1.—Every summons, subpœna, notice, proclamation, injunction, or other order not elsewhere specified in this table, Part III	1	0	0

[*See* explanations and instructions under the corresponding article 1 for JUDGES, &c., Part I, above.]

	Rs.	A.	P.
Article 2.—Every commission to make a local investigation or to take evidence, or for any other purpose—			
(*a*) in respect of the commission	1	0	0
(*b*) in respect of the remuneration of the commissioner, *i.e.*, person who is to execute the commission, *per diem*	3	0	0

Note.—A sum sufficient to cover the daily fee (*b*) for such period as may be fixed by the court for the purpose of executing the commission must be paid in addition to the fee (*a*) at the time when the commission is issued; and if the commission is not completely executed within the period so fixed, a further sum sufficient to cover the daily fee (*b*) for the excess period extending from the end of that fixed period up to, and inclusive of, the date of the complete execution of the commission, must be paid before the Commissioner's report or other return to the commission is used.

[*See* supplementary instructions and explanations given above under the corresponding article 2 of Part II for JUDGES, &c.]

	Rs.	A.	P.
Article 3.—Every process of attachment of property by notice or proclamation	1	0	0

[*See* further above, Part II, under corresponding article 3 for JUDGES.]

	Rs.	A.	P.
Article 4.—Every process of attachment of property by actual seize—			
(*c*) in respect of the warrant of attachment ...	1	0	0
(*d*) in respect of each man necessary to ensure safe custody who is left in possession, *per diem* ...	0	4	0

Note.—A sum sufficient to cover the daily fee (*d*) for a period of at least one month must be paid in addition to the fee (*c*) at the time when the process is obtained; and if the attachment is continued beyond the month, a further like sum for the next month must be paid two clear days before the expiration of the month which has been already paid for, and so on for each ensuing month, otherwise the man or men in possession will be removed.

	Rs.	A.	P.
Article 5.—Every process of attachment by the arrest of the person	5	0	0

[Processes directed against a defendant after judgment and in course of execution of a decree.—(*C. O.*, 1874, *No.* 13, *May* 12*th.*)

	Rs.	A.	P.
Article 6.—Every order for the sale of property—			
(*e*) in respect of the order of sale	1	0	0
(*f*) by way of poundage on the gross amount realized by the sale up to Rs. 1,000	2 per cent.		
together with a further fee on all excess of gross proceeds beyond Rs. 1,000 of	1 per cent.		

Note.—The portion (*e*) of this fee must be paid when the process is obtained, and the poundage (*f*) at the time of making the application for payment of the proceeds of sale out of court, as hereinafter provided.

RULE II.—Notwithstanding Rule I, no fee shall be chargeable for serving and executing any process, such as a notice, rule, summons, or warrant of arrest, which may be issued by any court of its own motion, solely for the purpose of taking cognizance of and punishing any act done or words spoken in contempt of its authority.

RULE III.—No process which comes within the operation of Rule I shall be drawn up for service or execution, except upon an application made to the court for that purpose in writing, on a document bearing upon its face stamps not less in amount than the fee which by Rule I is directed to be charged for serving and executing the process so sought to be drawn up. This application may, however, at the option of the party making it, be included in the petition by which he moves the court to order the process to issue, but in that case the petition must bear the requisite stamps for the process fee, in addition to such stamps, if any, as are needed for its own validity: and, in either case, the filing of the application, thus duly stamped, shall constitute payment of the fee chargeable for the process.

RULE IV.—In cases which are covered by the note to article 2 of Part I, and the note to articles (2) and (4) of Parts II and III of the table of fees in Rule I, the additional fee which may become payable after the process has been actually issued shall be paid by filing a written requisition to the court to receive the fee, which document shall bear on the face of it stamps not less in amount than the additional fee, together with a memorandum of the purpose for which it is paid.

RULE V.—The proceeds of a sale effected in execution of any decree will only be paid out of court on an application made for that purpose in writing, and the additional fee (*f*), article (6), Parts II and III, must be paid by stamps affixed to, or impressed upon, the first of such applications, whether it be or be not made by the person who obtained

the order for sale, or whether it does or does not extend to the whole of the proceeds. No fee will be chargeable upon any such application subsequent to the first.

N.B.—The fees paid in pursuance of these rules must in all proceedings be deemed and treated as part of the necessary and proper costs of the party who pays them

[In addition to [other] fees, the actual charge which must be incurred, if it is necessary to employ boats or cross-ferries, is to be levied from and paid by the person at whose instance the process is issued before issue of the process to the peon who carries the process.—(*C. O.*, 1867, *No.* 31, *September 25th, paragraph* 5, *renewed by C. O.*, 1874, *No.* 13, *May 12th.*)]

[In cases where application is made for the issue of process beyond the jurisdiction of the court, the application will bear the proper stamp, and an endorsement will be made on the process to the effect that the proper stamps have been affixed to the application.—(*C. O.*, 1874, *No.* 13, *May 12th.*)]

Scale of Nazirs' and Peons' Pay.

Chapter III.—*Rules framed by the High Court of Judicature at Fort William in Bengal, in accordance with Clause III, Section* 20 *of the Court Fees' Act*, 1870.

I. The following monthly salaries shall be allowed to the nazir and other persons employed in the service or execution of processes of the civil courts:—

1*st.*—In the Court of the District Judge—

	Rs.
The nazir being the person responsible for due service and execution of all processes in the courts at the Sudder Station	100
Rising by increments to	200
His clerk or taidnavis	10
Peons, 2nd grade	8
Ditto, 1st grade, after three years' approved service* ...	10

2*nd.*—In the Court of the Subordinate Judge, not being Judge of a Small Cause Court—

Naib Nazir, Rs. 25 to 35, according to circumstances.
Peons, as in Judge's Court.

* With reference to Rule I of the rules framed under clause 3, section 20 of the Court Fees Act (VII of 1870), it was not the intention that every peon able to read and write should be promoted to the first grade on completion of three years approved service; but that a certain proportion of peons, which should vary according to circumstances from one-third to one-half, should be in the first grade, and that three years' approved service was required to make them eligible for that grade.—(*C. O.*, 1875, *No.* 14, *December 4th.*)

3rd.—In the Court of the Sudder Moonsif—

	Rs.
Naib Nazir	20
Peons, 2nd grade	6
Ditto, 1st grade, after three years' approved service ...	8

4th.—In the Courts of Moonsifs not at the Sudder Station—

	Rs.
Nazir	25
Peons, 2nd grade	6
Ditto, 1st grade, after three years' approved service ...	8

5th.—Small Cause Courts—

Nazir, Peons } as at present.

Peons in the Revenue Court of a Collector shall be remunerated as those in the Court of the District Judge. Peons in the Revenue Court of a Deputy Collector shall be remunerated as those in the Court of a Moonsif.

Note.—The rates of remuneration for peons provided by these rules are intended to secure the services of men who can read and write. But whenever, on the occurrence of a vacancy, candidates thus qualified shall not be available, the court on whose establishment the vacancy exists may record a declaration to that effect, and may then appoint temporarily some person whom it may consider competent to perform the duties, and who shall be paid at the rate of Rs. 5 per mensem in Moonsifs' courts and Rs 6 per mensem in all other courts. Provided that such appointments, when made by a court subordinate to the District Judge or the Magistrate of the district, shall be subject to the approval of such Judge or Magistrate, and shall cease as soon as duly qualified candidates shall be procurable.

[The intervals and rate of increment which govern the increase of salaries of the establishment to which the officer belongs are applicable under these rules, and will take effect from the date of their promulgation, except when the application of this order will reduce the pay of present duly qualified peons.

The establishment of peons of a Subordinate Judge's court, when the Subordinate Judge is also Judge of the Court of Small Causes, is to be kept distinct from the Small Cause Court establishment.—(*C. O.*, 1874, *No.* 13, *May* 12*th.*)]

The pay of the naib nazirs attached to the courts of the Subordinate Judges in Bengal will be fixed within the limits of Rs. 25 and 35 per month by the Government of Bengal on the report of the District Judges.

2. As to the rate of increment to the progressive pay of nazirs of the civil courts in Bengal, the Governor General in Council is pleased to sanction the grant to these nazirs of annual increments at one-tenth of the difference between the minimum and maximum of their pay.—(*Government of India, Financial Department, to Bengal Accountant-General, No.* 1456 *of* 8*th March, communicated by High Court's C. M. No.* 5, 8*th April* 1875.

DISTRICT ESTABLISHMENT OF PEONS.

CHAPTER IV.—*Rules framed by the High Court of Judicature at Fort William in Bengal in accordance with Section 22 of the Court Fees' Act*, 1870.

Civil Courts.

1*st.*—The Judge of every district in the Regulation Provinces shall ascertain the average number of processes issued from his own court and from each of the courts subordinate thereto during three years last past.

2*nd.*—To this shall be added, in the districts to which Act VIII of 1869 (B. C.) has been extended, the average of processes issued by the revenue courts of the same district.

3*rd.*—The peons to be employed in each district shall be in number sufficient for the execution of a like number of processes, each peon being for this purpose considered capable of executing—

In the zillah court and the Subordinate Judge's Court, per annum ...	200
Ditto Moonsif's Court, per annum ...	250
Ditto Courts of Small Causes, per annum ...	300

4*th.*—In order to provide for the service of processes of certain kinds which occupy a longer period, and in respect of which a higher fee is charged, 25 per cent. may be added in each case to the average ascertained under the 1st and 2nd rules.

5*th.*—In the districts named in the margin, where the peons entrusted with a large proportion of processes have to be conveyed by boat, the number of processes which each peon is expected to serve may be reduced by one-third, and the number of peons to be employed shall be calculated accordingly.

Backergunge.	Luckimpore.
Dacca.	Chittagong.
Jessore.	Dinagepore.
Sylhet.	Mymensingh.
Kamroop.	Rajshahye.
Nowgong.	Rungpore.

N B.—For the districts in the second column the calculation is to be made from May to October inclusive only.

6*th.*—Where there are in any district several courts of any one class, the Judge may authorize the appointment of such number of peons on the whole for such courts as may suffice for executing the total number of processes, and may from time to time apportion such peons according to need among such courts.

7*th.*—When it appears to the District Judge that the number of processes issued out of any court or class of courts in the district has increased by 10 per cent., he shall be

competent to make a corresponding increase in the number of peons; and if there shall be a diminution to the like extent, or if he shall be satisfied that the processes of all or any of such courts can be executed by a smaller number of peons, it shall be his duty to make a reduction accordingly.

ENQUIRY (1875) AS TO THE OPERATION OF THE ABOVE RULES.

C. O., 1875, *No.* 3, *May 8th.*

More than a year having now elapsed since the promulgation of the rules made under the Court Fees' Act, and the Court being desirous of judging how the rules have worked, and in what respects they need improvement or expansion, all District Judges and Judicial Commissioners under the Court's authority are requested to submit, within the first week in July next, a careful report on the subject.

2. The Court desire to be informed as to the operation of the rules—

1*st.*—With reference to the interests of suitors.

2*nd.*—As to official convenience.

3*rd.*—From the financial point of view.

3. Under the first of these heads, it should be shown whether any injurious effect has been produced, or complaint occasioned, by alterations in the amount of fees as compared with the practice superseded by the rules; whether a resort to process of any particular kind has been promoted or discouraged by the fees imposed, with especial reference to the charges, some of them new, imposed on processes requisite in execution of decree.

4. Under the second head, it should be stated how far the rules have worked smoothly, regarded merely as a code of office regulations; whether they have presented any real difficulties to fairly intelligent officers, whether they have been found to admit of easy check and control by superior authority, whether the fees are considered as bearing a due proportion to the importance or difficulty of the services to which they severally apply, and whether they have in any instance a tendency to throw excessive labour on officers who are not paid out of the fee fund, or with reference to it.

5. As bearing upon this inquiry, the Court refer to the very general complaint that improper advantage is taken of the uniform fee of Rs. 2 or Re. 1 on every summons, without reference to the number of persons named therein, and that witnesses in unreasonable numbers are cited either recklessly or with a view to some grievance being founded on the failure of such witnesses to appear at the trial.

6. Upon the third head of inquiry the Court desire to be informed, as fully as possible, of the income derived from the fees, and the expenditure to be set against them. While on the one hand the Court have not considered that these fees ought to be in any important sense a source of revenue, on the other it is clear that the Government ought to be protected against loss, not only on the whole, but also in any given direction.

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7. It is material to know whether the salaries and remunerations fixed for the peons and the superior officers employed in the service or execution of process have been found adequate in both the higher and the lower grades for the purpose of attracting and retaining in the service men duly qualified for the duties which they are called on to perform, and whether the circumstances of particular districts demand an increase, or permit a reduction in the salaries appointed, which, as they stand, are applicable to all districts.

8. The Court desire particularly to be informed how far it has been practicable to appoint no process-server who cannot read and write, how many old officers of this kind, *i.e.*, unable to read and write, have been retained, and for what reason. And opinions are invited as to a suggestion which has been made that on the establishment of every superior court there should be a limited number of peons of a superior class, and bearing a different name, for the performance of the more responsible duties devolving on these men, such as the attachment of property and arrest of judgment-debtors in large suits, and the like.

9. The Court expect that District Judges will treat the subject with the care which its importance demands, and will render valuable assistance in preparing revised rules for acceptance by the Government.

10. It will be convenient if, in making their reports, the District Judges follow strictly the order here indicated.

PROCESSES.*

Processes for other districts to be especially clear and legible.

It has been brought to the notice of the Court (1876) that it frequently happens, in the case of process issued in one district for service or execution in another, that the seals and signatures on the process are illegible, whereby great inconvenience and delay are caused.

* * * * * *

3. The Court is therefore pleased to direct that, in every process and every sentence or order (of whatever description) issued by a judicial officer for whatever purpose it may be issued or made, the name of the district and of the court from which the same is issued, and also the name and powers of the officer issuing or making it, shall be clearly set out in such manner that it may be easily read.

4. The Court further directs generally that in all cases all judicial officers shall take care to sign their names distinctly and legibly.—(*C. O.*, 1876, *No.* 4, *March* 13*th.*)

Seals for District Courts.

With a view to avoid wear and tear of the seals recently provided for the use of District Judges, Government has, on the recommendation of the Court, sanctioned the supply of seals of a smaller size and simpler make for use on minor occasions.

2. These seals, when ready, will be forwarded by the High Court.

3. It must, however, be understood that they are not to be used for sealing judgments, writs, processes, or other documents made or issued judicially; for such purpose the regular Seal of the Court should alone be employed, under the superintendence of a responsible officer. But for all other purposes the smaller seals should be used.—(*C. O.*, 1876, *No.* 8, *May* 12*th.*)

Refunds.

A question having been raised as to whether there should be any refund, and if so, how it should be effected, of the value of court fee stamps filed on account of processes which are not eventually issued, and of postage labels put in on account of letters which have not been despatched, the High Court is pleased to prescribe, for general adoption by

* On matters relating to law and procedure, see also under "Procedure."

all civil authorities subject to it, the course indicated below as obviating the necessity for any refund at all.

2. Postage labels ought not to be received unless and until the party desires that the process should be actually transmitted by post, and in that case the process shall be so transmitted.—(*C. O.*, 1873, *No.* 17, *August 2nd.*)

Service of notice in foreclosure proceedings to be proved.

It having been [1874] brought to the notice of the High Court that, in one of the districts within the Court's jurisdiction, the practice of taking formal contemporaneous proof of the service of notice in foreclosure proceedings under Regulation XVII of 1806, is not observed, the Court are pleased to direct that, if in any other district a similar omission prevails, the proper practice should be introduced.—(*C. O.*, 1874, *No.* 8, *March 7th.*)

Summonses on Police Officers.

The High Court directs that when police officers are summoned by the civil courts to give evidence, the summons be sent for service through the superiors of the officers concerned. The civil courts are further directed to be very careful to abstain from ordering the production of police station diaries unnecessarily, complaint having been made of the inconvenience caused by such requisitions.—(*C. O.*, 1870, *No.* 23, *August 5th.*)

Summonses in other jurisdictions.

Summonses issuing under sections 59 and 158 of the same Code shall ordinarily be directed, not to the Judge of the district where it has to be served, but to the court "by which it can be most conveniently served," *i.e.*, to the Moonsif within whose jurisdiction the defendant or the witness (as the case may be) resides.—(*C. O.*, 1872, *No.* 17, *May 14th.*)

WARRANTS.

The High Court are pleased to direct that for the future, whenever any civil court may find it necessary to commit any person to the civil or criminal jail, the warrant of commitment shall be addressed to the officer in charge of the jail, instead of to the Magistrate of the district.—(*C. O.*, 1865, *No.* 27, *November 20th.*)

The two accompanying forms of warrant, as per margin, are hereby prescribed for adoption by civil courts

Form of warrant for imprisonment on failure of giving bail for appearance. Form of warrant for imprisonment in execution of a civil decree.

when committing civil prisoners to the custody of the officer in charge of the jail, with reference to either section 78 or section 278 of the Civil Procedure Code.

2. The Superintendent of Stationery will be instructed to add, the forms in question to his list of authorized civil forms.—(*C. O.*, 1873, *No.* 5, *January 27th.*)

In the Court of

Suit No. of 18 .

To the Officer in Charge of the Jail at

in District

Whereas
been brought before this Court this day of
one thousand eight hundred and seventy-
under a Warrant of Arrest issued under section 75 of Act VIII of 1859 on the day of
one thousand eight hundred and
in a suit wherein

plaintiff and
defendant, and by which Warrant the said
directed to show cause why should not give
good and sufficient bail for appearance in this
suit. And whereas the said
not given such bail nor satisfied the
Court that entitled to be discharged from
custody under the provisions in that behalf of Act VIII of 1859, you are hereby, in Her Majesty's name, commanded and required to take and receive the said

into the said jail and keep imprisoned
therein until the satisfaction of any decree that may be passed against
in the suit, or the said shall be otherwise
entitled to be released according to the terms and provisions of section 78 of the said Act. And the Court does hereby fix annas per diem as the rate of the monthly allowance for subsistence of the said during confinement
under this Warrant of Commitment.

Given under may signature and the seal of this Court the
day of in the year of Our Lord one thousand
eight hundred and seventy-

In the Court of

Suit No. of 18 .

To the Officer in Charge of the Jail at

Whereas been brought before this Court this day of
one thousand eight hundred and seventy- under a

Warrant in execution of a decree, which was made and pronounced by the said Court on the day of one thousand eight hundred and in a suit wherein

plaintiff and

defendant, and by which decree it was ordered that the said should pay

and whereas the said

not obeyed the decree nor satisfied the Court that entitled to be discharged from custody under the provisions in that behalf of Act VIII of 1859, you are hereby, in Her Majesty's name, commanded and

required to take and receive the said

into the Jail and keep imprisoned therein until the said decree shall be fully satisfied, or the said shall be otherwise entitled to be released according to the terms and provisions of section 278 of the said Act. And the Court does hereby fix annas per diem as the rate of the monthly allowance for the subsistence of the said during confinement under this Warrant of Commitment.

Given under my signature and the seal of this Court the day of in the year of Our Lord one thousand eight hundred and seventy-

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Processes in Mofussil for Calcutta Small Cause Court.

The attention of the Court has been drawn to the fact that, notwithstanding the full and clear directions which in each case accompany processes forwarded by the Calcutta Court of Small Causes for service under sections 29 and 30 of Act IX of 1850, it very frequently happens that the provisions of the law in respect of such processes are not carried out by the courts addressed. The High Court, in now directing that more exact attention be given to such cases in future, feel obliged to point out to the subordinate civil and criminal courts of all grades that failure to comply with instructions so explicit is quite inexcusable: it can only be explained on the supposition that the Judges or Magistrates concerned have bestowed no personal attention on the matter.—(*C. O.*, 1870, *No.* 24, *August* 23*rd.*)

PROCESSES IN CALCUTTA.—SHERIFF'S FEES.

No. 621, dated Calcutta, the 21st February 1870.
From—The Registrar of the High Court,
To—The Sheriff of Calcutta.

I am directed by the Court to forward, for your information, a copy of a notice which has this day been posted up for general information. You will observe that all processes and rules of this Court for service in the Town of Calcutta will henceforth be delivered by the parties or their pleaders to you direct, and will not, as heretofore, be forwarded through the mofussil courts.

2. I am to request that you will receive no such processes or rules for service unless the requisite fees are tendered to you at the time of delivery, and that you will return them whenever the fees are not so tendered with an endorsement to that effect.

NOTICE.

The High Court having determined to transmit processes and rules intended for service in the Town of Calcutta to the Sheriff direct, parties will not, from and after this date, be required to pay into this Court tullubana in respect of such processes and rules by stamps, as provided in the rules annexed to circular order No. 11 of the 7th of October last. Such processes and rules will in future be prepared and made over to the parties or their pleaders for delivery to the Sheriff for service, and must be delivered to him accompanied by the requisite fees, viz. two rupees for each person to be served.

CIRCULAR MEMO. No. 2.

Copy forwarded to the Judge of for his information, in continuation of circular order No. 11 of 7th October last.

PROCESS IN CALCUTTA GENERALLY.

No. 1655, dated Calcutta, the 17th June 1874.
From—The Registrar of the High Court,
To—The Judge of 24-Pergunnahs.

I am directed to acknowledge the receipt of your letter No. 442, dated 12th May 1874, applying for certain

information in connection with circular order No. 12, dated 27th March 1874, on the subject of Sheriff's fees.

2. In reply, I am to explain that "an ordinary return" is a return of service made under section 49 of Act VIII of 1859; "a special return" is a return of service made otherwise than under that section. "A citation, or summons to appear," is a process issued by the civil courts in this country in the exercise of their testamentary and intestate jurisdiction.

3. The only processes issued by the High Court in its original jurisdiction which the Sheriff's officers are required to serve or execute are those specified in the scale of fees which accompanied the Court's circular order above alluded to, viz:—

(1) Summons to a defendant to appear and answer.
(2) Citation.
(3) Execution (this includes prohibitory orders).

4. In reply to your 3rd paragraph, I am to point out that the inconvenience of which you complain from not knowing what fee will be required before the return is received may be obviated by your sending with the process the maximum amount of fees chargeable by the Sheriff and his officers under their respective tables of fees. The Sheriff will account to you for whatever excess may be thus entrusted to him.

5. The Court direct me to add, for your information, that as a rule processes are served in the case of a European by a European bailiff, and in the case of a native by a native bailiff. A native bailiff is never employed when the person to be served or arrested is a European; a European bailiff may, however, at the request of the suitor, be employed when the person to be served or arrested is a native. This practice should always be remembered when receiving an application for the service of process, as it bears upon the amount of fees to be sent for the service of process by the Sheriff.

CIRCULAR ORDER No 15.

Copy of this letter forwarded to all District Judges and to the Judges of the Small Cause Courts of Sealdah and of Howrah, in continuation of the Court's circular order No. 12, dated 27th March 1874.

Processes in Appeal Cases.

Tullubana—Consequences of not depositing it.—(*C. O.* 1861, *No.* 182, *August* 12*th.*)

Forwards to the Judges, for the information and guidance of their subordinates, extract paragraph 8 from a letter from the Registrar of the Sudder Dewany Adawlut, to the Secretary to the Government of Bengal, No. 1272, dated the 10th August 1861:—

Sudder decision No. 172 of 1859, dated 24th March 1860, p. 379.

Para. 8.—The Court do not think that any alteration in the law is necessary with regard to the depositing of tullubana. They have already decided, in the case noted in the margin, that on an appellant failing to deposit it for the service of summons on the respondent, the case may be struck off the file, and the ruling is equally applicable to a case in the court of first instance. Attention will be called to the subject, in order that none of the Small Cause Court class of cases may be left undisposed of on such ground.

AGENCY FOR SERVING Processes in Appeal Cases.

Extract from a letter from the Registrar of the High Court, Fort William in Bengal, to the Judge of Dinagepore, No. 3289, *dated* 15*th September* 1865.

Para. 2.—With reference to the opinion expressed in your 2nd paragraph, that none but the legitimate peons of court should serve the processes issued from such court, it appears to the High Court that *every court acting as an original court should issue its own processes;* but that appellate courts should issue notices, &c., on the parties concerned *through* the original court. This is the practice laid down both by the present* and the proposed† Code of Procedure, though, under the draft of the amended Act, appellate courts may issue their own notices if it be convenient. This plan is less expensive to suitors than if every court issued direct its own process. Act V (Bengal Council) of 1863, section 2 (rescinded by Court Fees' Act), does not interfere with the Code of Civil Procedure in any way, but leaves it just as it stood.

* Section 345, Act VIII of 1859.
† Section 559 of the draft law.

Above extract forwarded for the information and guidance of all Zillah Judges and Principal Sudder Ameens, who are hereby directed to carry out the instructions of the High Court as therein contained.—(*C. O.*, 1865, *No.* 23, *September* 14*th.*)

Postage charges on Processes in appeal cases generally.

The High Court having become aware (1865) of the existence of a diversity of practice in different districts in regard to the transmission of copies of decrees and certificates under section 286 of the Code of Civil Procedure, some judicial officers franking the envelopes on the Public Service, whilst others send them post paid, are pleased to direct that the practice, wherever it may prevail, of forwarding such communications *on the Public Service* be forthwith discontinued. Whenever a court in one district may transmit a certificate and decree for execution in a subordinate court of another district, the transmitting court shall require from the party desiring its assistance stamps sufficient not only for paying the postage to the chief civil court of the district, but also for forwarding the envelope to the subordinate court in which the decree is to be executed, and shall enclose these last in the letter giving cover to the certificate and decree.

2. Under this ruling, the transmission of civil processes to the Sheriff of this Court on its original side, as well as the return of such process after service, must no longer be effected at the public expense. All Civil Judges are accordingly requested, when sending notices or summonses to the Sheriff, to send them "Post paid," and to provide that officer at the same time with a sufficiency of postage stamps to enable him to return those processes after service to the court from which they issued.—(*C. O.*, 1865, *No.* 20, *September* 4*th.*)

Postage Charges on Processes for High Court or Privy Council.

It is hereby notified, for the information and guidance of all Civil Judges subordinate to the High Court, that the Government of India in the Home Department has,* in accordance with a proposal of the Court, authorized all Zillah Judges in the Lower Provinces to transmit by post, franked as on Her Majesty's service, the processes issued in all cases appealed either to the High Court or to Her Majesty in Council.

2. It is to be understood that the processes thus issued under frank should not be registered. If registered, they must be prepaid for by stamps.—(*C. O.*, 1870, *No.* 19, *July* 29*th.*)

* *Vide* letter from Under Secretary, Government of India, Home Department, to Officiating Junior Secretary, Government of Bengal, No. 912, dated 28th May 1870

Processes in Appeals to High Court

A copy of a Resolution passed by the High Court on the 25th of May last, embodying rules [*see* below] for the payment of tullubana on account of the service of notice to respondents in appeals in civil cases preferred to the High Court, is forwarded herewith for the information and guidance of all civil courts, and the attention of those officers is at the same time drawn to circular order No. 10 of the 26th of April 1864;* and they are required in every instance in which the instructions of that circular are not complied with, to specify the reasons of such non-compliance.

2. The sanction and approval of His Honor the Lieutenant-Governor having been obtained to the system of payments introduced by the rules, that system will be brought into effect in respect of all appeals to the High Court from and after the 1st of December next.

3. The attention of all civil courts is specially drawn to Rule 4, which requires them, on receipt of the High Court's precept calling for the record and transmitting the notices of appeal, at once to cause service of notice without requiring further payment of tullubana, or action on the part of the appellant, except that "the appellant, or any one employed by him," is to "be at liberty to accompany the serving officer for the purpose of pointing out the residence of the respondent."

4. Their attention is also drawn to the provisions of Rules 5 and 6, and the latter clause of Rule 10.—(*C. O.*, 1869, *No.* 11, *October 7th.*)

The rules appended to [the above] Circular order No. 11, dated the 7th October last, as far as they relate to the payment of the cost of service of notice to respondents, apply also to processes in appeals to Her Majesty in Council, and all other processes issued by the High Court.—(*C. O.*, 1869, *No.* 17, *December* 21*st.*)

Rules of 25*th May* 1869, *regarding tullubana on appeals before High Court.*

(*C. O.*, 1869, *No.* 11, *October 7th.*)

1. That the time table A, hereto annexed, be adopted, and a copy sent for guidance to the several zillah courts.

2. That upon obtaining the sanction and approval of His Honor the Lieutenant-Governor of Bengal, it be ordered that from and after the first day of May next the cost of service of notice on the respondent in every appeal in a civil case preferred to the High Court shall be paid at the High Court at the time of presenting the appeal, by an adhesive stamp of such description as shall be issued for that purpose to be affixed to the petition of appeal. The amount to be so paid shall be three rupees if there be only one respondent, or

* Circular order, 1864, No. 10, 26th April, will be found at page 75.

one rupee and eight annas for each respondent to be served, to which shall be added an account of boat-hire, &c., in respect of respondents to be served in any district mentioned in the annexed table B, in the months specified, the sums respectively set down, one such payment for each appeal.

3. That a separate account be kept of such stamp duty.

4. It is further ordered that the precept of this Court, calling for the record and transmitting the notices of the appeal, shall direct that the notices be served; and it shall be the duty of the lower court thereupon to cause service of the notices without further payment of tullubana or action by the appellant; provided that the appellant, or any one employed by him, shall be at liberty to accompany the serving officer for the purpose of pointing out the residence of the respondent.

5. That the lower courts shall issue all notices received for service immediately on receipt thereof, and that in their return of service, in every instance, the lower courts shall be required to insert the date of receipt by them of the notice, the date on which it was made over to the serving officer, and the date on which it was received back from him.

6. That every return of service, or of failure to serve the notice, be accompanied by the affidavit or solemn declaration of the serving officer, specifying the fact and the mode of service, or the reason why service could not be effected in any of the modes allowed by law. It shall be the duty of the lower court to cause the notice to be served in sufficient time before the date fixed, and if such service be impracticable, to state the reasons for which service cannot be effected; and thereupon a fresh date shall be fixed by the High Court. In every case the court making the return is to satisfy itself that a valid service has been made, or that there has been a failure of service, and shall certify such opinion to this Court, with the reasons, in case of a failure of service.

7. That the time allowed for service of the notice shall be specified therein by the Deputy Registrar in accordance with the table of time now adopted, and shall commence from the date on which it is despatched, which shall in general be within three days at the latest from the date on which the appeal is filed.

8. That the date to be fixed by the Deputy Registrar for the hearing of the appeal shall be the seventh day after that on which the time allowed for service of the notice

expires, provided it be not a Sunday or holiday, and in that case the first business day afterwards.

9. That if there be several respondents to be served, and they do not all reside in the same district, the time for service of the notices and for hearing shall be fixed with reference to that district for which the longest time is allowed in table A.

10. That in every instance in which it shall appear that the respondent, or any one of the respondents to be served, resides in any district other than that from which the appeal comes, the Deputy Registrar, in fixing the time for service and for the hearing of the appeal, shall add a sufficient time for sending the notice from the district from which the appeal comes to the district in which any notice is to be served; and the court which serves any notice sent through the lower court shall make its return of service, or of the failure of service, as the case may be, direct to the High Court, and shall be guided by Rules 5 and 6.

11. That the endorsement on every paper-book prepared hereafter for the use of the court at the hearing of the appeal shall, in addition to the other matters at present specified in such endorsement, contain—

the date on which the appeal is filed;
the date on which the notice is sent out;
the date of service of notice;
the date on which the record is received from the lower court; and
the date on which the appeal is ready for hearing, and the paper-book prepared.

12. That in appeals in which the respondent shall not have appointed a vakeel up to the date of the preparation of the paper-book, an appendix containing the deposition of the serving officer, and the return, and the remarks of the lower court as to the service, shall be added to the paper-book either in transcript or translation, according as they may be in English or the vernacular.

That a copy and, where necessary, a translation of these rules be transmitted to each of the zillah and other subordinate courts for information and guidance, and that their attention be drawn to the circular order of this Court, No. 10, dated the 26th of April 1864, and that they be required in every instance in which the instructions contained in the circular order are not complied with, to specify the reasons of such non-compliance.

That a copy of these rules be hung up in each of the two libraries, and at the main entrance of the court house, for general information.

A.

Time Table.

Districts.	Number of days allowed for service of notice of appeal on the respondent.	Districts.	Number of days allowed for service of notice of appeal on the respondent.
Assam (including Eastern Dooars)	50	Hooghly	25
Backergunge	35	Jessore	29
Beerbhoom	23	Midnapore	27
Bhagulpore	31	Moorshedabad	23
Burdwan, East	23	Moulmein	50
Burdwan, West	25	Mymensingh	35
Cachar	50	Nuddea	29
Cherrapoonjee	50	Patna	31
Chittagong	35	Purneah	33
Chota Nagpore	40	Rajshahye	31
Cooch Behar (including Western Dooars) ...	50	Rungpore	33
Cossiah and Jynteeah Hills	50	Sarun	31
Cuttack	35	Shahabad	31
Dacca	29	Sylhet	35
Dinagepore	31	Tipperah	37
Gya	33	Tirhoot	33
		Twenty-four Pergunnahs	25

B.

Table of Charges for Boat-hire and Ferry Toll.

Districts.	Amount to be charged.	The period during which the charge is to be made.
	Rs. A. P.	
Backergunge (whole district)	1 0 0	All the year.
Bhagulpore	1 0 0	June to October inclusive.
Chittagong	0 8 0	All the year.
Cuttack	0 4 0	June to November inclusive.
Dacca	3 0 0	All the year.
Dinagepore	1 8 0	June to October inclusive.
Jessore	3 0 0	All the year.
Moorshedabad	1 0 0	June to October inclusive.
Mymensingh	3 0 0	Ditto.
Purneah	2 0 0	Ditto.
Rajshahye	1 8 0	Ditto.
Rungpore	3 0 0	All the year.
Sylhet	3 0 0	Ditto.
Tipperah	2 0 0	June to October inclusive.
Kamroop	1 8 0	All the year.
Nowgong	1 8 0	June to October inclusive.
Lukhimpore	1 0 0	All the year.

The practice, reported from several districts, of exempting from toll peons wearing their badges and engaged in executing processes, should be made general.

CANCELLING STAMPS, EMBOSSED AND ADHESIVE.

Rules; C. O., 1844, *No.* 55, *May* 14*th.*

What stamps to be punched.

I. *All stamps filed and not liable to be returned*, are to be punched.*

By whom in old cases.

II. In old cases the duty is to be performed by the *serishtadar* of the *zillah* court, but under the supervision of the Judge.

By whom in pending cases.

III. In pending cases the punching is to be effected by the same officer after decision and before consigning them to the record office.

By whom in future.

IV. Stamps which may be now filed will be punched by the *serishtadar* or other officer receiving it, and Judges of all grades, when signing the order for filing, are to see that the rule is observed.

Blank stamps which are filed to make up for deficient value of any petition, &c.

Blank stamps how to be disposed of.

V. In old cases such stamps are to be destroyed by the *Zillah* Judges, and a certificate of the fact endorsed on the principal stamp.

VI. In pending cases the same course is to be followed after decision and before consigning them to the record office.

C. O. No. 49, *dated* 23*rd June* 1854.

Size of punch

5. The Court direct that the punch with which, under paragraph 6 of circular order No. 16, dated 5th May 1843, stamps are defaced, shall in future be not less than one inch in diameter; punches of that size will be immediately substituted for those now in use.

Defacement how to be effected

6. The portion to be defaced will invariably be the centre of the upper colored stamp, care being taken to leave the value of the stamp legible in at least one of the three languages there employed.†

7. When, under the permission granted by circular order No 99 of 28th August 1840, two or more stamp papers are employed to make up the value of the stamp

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* Section 30 of the Court Fees Act (VII of 1870) enjoins cancellation of the stamp in the case of every document requiring a stamp under that Act, before the document is filed or acted on.

† The cancellation prescribed by section 30 of Court Fees Act (1870) is to be effected "by punching out the figure-head, so as to leave the amount designated on the stamp untouched."

required for the petition,* the entire blank part of those papers, on which there is no writing, shall be cut off and destroyed, only the upper portion, containing the colored stamp, being preserved in the nathi. The serishtadar will certify that the proper amount of stamp has been furnished on the face of the stamp paper on which the petition is written.

8. The serishtadar, on whom the duty of punching all stamp papers is imposed, shall certify on the back of the colored stamp in the following form:

Punched by me this 22nd June, 1854.

A. B
Serishtadar

At the instance of the Government of India, in the Financial Department, the attention of District Judges and of all Judicial Officers is called to the requirements of the notification† of the Government of India, Financial

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The rule now in force is—"When the amount of the fee cannot be denoted by a single impressed or a single adhesive stamp, the next lower impressed or adhesive stamp shall be used, and the deficiency made up by one or more additional stamps, which may be either impressed or adhesive." See Fin. Notification No. 1756, dated 8th March 1872, at p. 425, Part I, *Gazette of India* of 20th April 1872.

† The following orders issued by the Government of India in the Financial Department are republished for general information :—

Circular, dated the 22nd December 1871.

SEPARATE REVENUE—STAMPS.

To—

No. 3264.—I am directed to request that attention may be called to the requirements of the notification of this Department, No. 1865, dated 15th March 1870, published on page 194 of the *Gazette of India* of 19th March 1870 (copy of which is subjoined for facility of reference).

2. It is believed that in some places suitors are permitted to make up the requisite value of court fees stamps by an aggregation of small values, and that by the discount paid on these, under the present system of sale, some loss of revenue is being incurred.

3. A document stamped otherwise than in accordance with the notification referred to is not properly stamped within the meaning of section 28 of the Court Fees Act, 1870.

4. With reference to the two notifications No. 106, dated 22nd April 1870, and No. 568, dated 31st January 1871 (copies appended), which permitted the use of adhesive stamps alone under certain circumstances, I am directed to request that, if the Government of ... see no objection, a rule may be made and published under section 27 (*b*) of the Court Fees Act, 1870, prescribing that in cases where adhesive stamps alone are used to denote any fee chargeable under the Act, the stamp used shall be a stamp of value equal to the fee required; and that if there be no stamp of the exact value, then the first stamp shall be of the next lower available value, and the margin shall be made up by stamps similarly selected.

No. 1865, dated 15th March 1870.

Notification by the Government of India, Financial Department.

In exercise of the power conferred by section 26 of the Court Fees Act (VII of 1870), and of all other powers enabling him in this behalf, the Governor-General in Council is pleased to issue the following directions :—

(1.) When the exact amount of any fee chargeable under the said Act can be denoted by a single impressed bi-color stamp, such fee shall be denoted accordingly. When the exact amount

Department, No. 1865 of the 15th March 1870, published at pages 37 and 38 of the *Calcutta Gazette* of the 3rd January 1872, prescribing the rules by which the use of bi-color stamps and adhesive stamps (as denoting fees chargeable under the Court Fees Act) shall be governed.—(*C. M.*, 1872, *No.* 1, *January* 10*th.*)

The attention of all civil courts of every grade is drawn to the subject of the annexed circular,* which has been issued by the Board of Revenue to all revenue officers, with reference to the risk of fraud arising from the facility with which adhesive stamps may be forged, and the consequent necessity for special examination by every head of a revenue court of such stamps presented in payment of court fees.

2. The Court desire that judicial officers of all grades should exercise in this matter such vigilance as they may; the Court also think it desirable that an examination by experienced revenue officers should be occasionally made in respect of the stamps affixed to documents filed in civil courts, and on this point the Board of Revenue has been addressed. (*C. O.*, 1873, *No.* 2, *January* 16*th.*)

The High Court have had frequent occasion to observe that the provisions of section 30 of the Court Fees Act are

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of the fee cannot be denoted by a single impressed bi-color stamp, the next lower available bi-color stamp shall be used, and the deficiency made up by one or more additional stamps, which may be either bi-color or adhesive.

(2.) The bi-color stamps referred to in this notification are the red and black printed stamps, and the adhesive stamps are those across which the words "Court Fees" have been printed.

(3.) Should the amount of the fee in any case involve a fraction of an anna, such fraction shall be remitted.

No. 106, dated 22nd April 1870.

Notification by the Government of India, Financial Department.

Under the provisions of section 26 of the Court Fees Act (No. VII of 1870), the Governor-General in Council directs that the fees referred to in section 3 of the above-mentioned Act may be denoted by adhesive stamps of the same kind as hitherto have been in use in the courts therein mentioned.

* *Board of Revenue's Circular.*

Certain attempts to forge the adhesive stamps lately issued for the purpose of denoting court fees have been recently brought to light, and the Member in charge now calls the earnest attention of all district officers to the risk of fraud arising from the greater facility with which such stamps can be forged in comparison with impressed stamps.

Large quantities of these adhesive stamps are daily presented in payment of process fees, and very seldom come under the actual observation of the head of a revenue court. Attempts to use forged stamps are more likely therefore to occur in connection with this mode of using stamps than with any other. Every head of a court in which such fees are paid by stamps is desired in future to call for from time to time papers which have been so stamped, and to satisfy himself thoroughly by personal examination that the stamps used in his court are genuine.

not always complied with, and that consequently stamps are fraudulently used a second time.

2. Too strict a compliance with the provisions of this section cannot be enjoined, and in all cases it should be carefully seen that the figure-head of the court fee stamps is punched out, and the piece destroyed, before any action is taken upon the documents to which the stamps may have been attached.

3. The Court now notify that, where neglect or insufficient compliance with the law appear to be habitual, they will invariably hold the presiding officer of the court, where defalcations may ensue, personally responsible.—(*C. O.*, 1874, *No.* 5, *February* 24*th.*)

The attention of all civil courts subordinate to the High Court is drawn to the provisions of section 30 of the Court Fees Act (VII of 1870), prohibiting the use in any proceeding of any document requiring a stamp under that Act until such stamp has been cancelled, and prescribing the mode in which cancellation is to be effected.

2. The civil courts subordinate to the High Court are at the same time directed, at the suggestion of the Government of India, to cause the labels affixed to documents *issued* by them, and liable to a fee under the Act, to be cancelled *at the time that they are affixed*, such a course being calculated to protect the revenue and prevent all evasions of the law.—(*C. O.*, 1871, *No.* 3, *January* 17*th.*)

The attention of all civil courts subordinate to the High Court is drawn to the [above] direction in paragraph 2 of circular order No. 3, dated 17th January 1871, as to the punching of stamps affixed to documents issued by them at the time the stamps are affixed; and it is ordered that the duty be assigned in every court to a specified responsible officer.

2. Blank papers for copies should, as usual, be presented with the application; but it is not necessary in such cases that stamps should be affixed to the blank papers; it will be enough if the adhesive stamp be made over to the officer whose duty it is to cancel stamps, and that officer will, if the request for a copy be allowed, at once affix the stamp to the paper and cancel it by punching; but if it be not allowed, he will return the adhesive stamp to the petitioner, a note to this effect being made in the register and signed by such officer. —(*C. M.*, 1874, *No.* 4, *February* 14*th.*)

The annexed copy of a resolution* of the Government of India in the Financial Department, No. 3373, dated 24th September 1875, relating to the cancellation of stamps under section 30 of the Court Fees Act of 1870, is hereby circulated for the information and guidance of all civil courts subordinate to the High Court.—(*C. O.*, 1875, *No.* 13, *December 2nd*):—

*No. 3373, dated 24th September 1875.

RESOLUTION—By the Government of India, Financial Department.

The Governor-General in Council observes that, under the provisions of the Court Fees Act, *the cancellation of stamps must be effected by the court or office receiving the document* to which a stamp has been affixed

2. His Excellency in Council is not satisfied that the rules at present in force provide adequate security for the stamp revenue in the case of labels affixed to *certified copies* of papers which are frequently only imperfectly obliterated by the court issuing these documents.

3. In supersession therefore of existing orders on the subject, the Governor-General in Council is pleased to direct that the court or office *issuing* copies, certificates, or other similar documents liable to stamp duty shall, *before issue, cancel* the labels affixed to them by punching out a portion of the label in such a manner as to remove neither the figure head nor that part of the label upon which its value is expressed. As an additional precaution, the *signature* of the officer attesting the document, with the date, should be written *across the label* and upon the paper on either side of it, as is frequently done by persons signing stamped receipts.

Measures for preventing evasions of the Stamp Law.

The accompanying copy of a correspondence regarding evasions of the Stamp Law by native money-lenders in certain classes of loan transactions is circulated for the information and attention of all civil courts.—(*C. O.*, 1876, *No.* 9, *May* 12*th.*)

From H. LEE, ESQ., *Acting Assistant Secretary to the Government of Bengal, to the Registrar of the High Court of Judicature, Calcutta.*—(*No.* 1018, *dated* 13*th April* 1876.)

In continuation of this office letter No. 374, dated the 9th February 1876, I am directed to forward the accompanying copy of a letter* from the Board of Revenue, on the subject of evasions of the stamp law in certain classes of loan transactions by native money-lenders, and to request that the Hon'ble Judges may be moved to direct the issue of the necessary instructions to the subordinate civil courts, on the points indicated by the Board of Revenue, for the prevention of the evasions in question.

* No. 222B, dated 23rd March 1876.

From W. H. GRIMLEY, ESQ., *Officiating Secretary to the Board of Revenue, to the Secretary to the Government of Bengal, Revenue Department—No.* 222*B, dated Fort William, the* 23*rd March* 1876.

IN paragraph 69 of the Board's report on the administration of the Stamp Department for 1874-75, an instance is related of the manner in which the stamp laws are evaded by native bankers in loan transactions. In the case in question the money-lender was in the

habit of advancing money without drawing up a formal bond, but a book was kept by him, made up of a number of loose pages stitched together with a piece of string. On each page was a loan transaction, thus: I, A. B., have this day borrowed of you, C. D., Rs. 100, with interest at 4 per cent. per mensem;—signed A. B., witnesses E. F., &c.; loan to be repaid in such and such instalments; and so on. Each leaf of the book related to a separate loan transaction, and could be removed at will. In case of default, the book, or leaf of the book, was produced in court in support of a suit by C. D. against A. B. This is said to be a type of similar transactions of daily occurrence in many parts of Bengal, and it is asserted that civil courts frequently give decrees on such informal documents, sometimes without any enquiry as to the absence of a stamp, and sometimes by admitting the document in evidence after payment of penalty duty under the provisions of section 20 of the Stamp Act XVIII of 1869. Either course is apparently illegal. The Member in charge is advised by the Advocate-General that each page of the loan book as above described constitutes a promissory note as defined in section 3, clause 25 of the Stamp Act, and is therefore liable to stamp duty under article 2 of Schedule I, annexed to the Act; under section 18 they are not therefore admissible in evidence without being duly stamped. Nor is it possible to correct the omission of stamp duty by payment to the civil court of penalty duty under section 20, inasmuch as it is expressly declared in section 28 that the provisions of section 20 do not apply to promissory notes.

2. Mr. Money thinks that it would perhaps have some effect in checking evasions of stamp duty on loan transactions if the attention of the High Court were invited to the existence of the practice as above described, with the view of such instructions being issued to the subordinate civil courts as will prevent the acceptance in evidence of unstamped pages of an account book in lieu of a sufficiently stamped promissory note, and also prevent their admission, on payment of penalty duty, under section 20 of the Stamp Act.

3. I am further directed to suggest that the attention of courts may be drawn to the fact that in very many instances promissory notes require to be engrossed on paper of a special kind, bearing stamps of a peculiar device. Under section 5 of the Act, all promissory notes, except those chargeable with the duty of one anna, must necessarily be written either on impressed paper, *i.e.*, paper impressed with a stamp, or upon paper upon which the stamp has been denoted in a peculiar manner by the Superintendent of Stamps or the Collector. Two samples, A and B, of impressed paper are enclosed. Specimen A, however, has ceased to be manufactured, and will only continue in use till present stocks are exhausted. A specimen (C) of denoted paper is also enclosed. This paper is denoted by the Superintendent of Stamps, Calcutta, and is sold to the public. The Collector of Calcutta also "denotes" by means of a circular steel die, but that process is effected after the body of the deed is written, and there is no mistaking it. Consequently, in certain cases, a promissory note inscribed on a leaf of an account book, even though it were stamped with an adhesive stamp, is not admissible in evidence as being duly stamped in accordance with the law.

ADHESIVE STAMPS. SIZE OF PAPER FOR RECORDS.

The Governor-General in Council, in notification No. 1756, dated 8th March last, has, in the exercise of the powers conferred by section 26 of the Court Fees Act of 1870, directed that the stamps used to denote any fee chargeable under the said Act may be either impressed or adhesive; and the Court have reason to believe that, on the present stock of impressed stamps being exhausted, the exclusive use of adhesive stamps for the above purpose will be enjoined. It is important therefore to provide against stamps of the latter description being affixed to documents written on paper unfitted for the purposes of record. It will also be convenient that the component parts of a record should be, as far as possible, of one uniform size.

2. The Government of India have approved of a description of paper which appears well calculated to answer the purpose intended, being supplied to the vendors of court fees stamps for sale to the public at one price per sheet. The size of this paper is 13½″ long by 8½″ wide, and samples can be obtained on application to the Superintendent of Stationery.

3. It may be a question whether Judicial and Magisterial officers could refuse to receive an application or a petition merely because it was not written upon paper of a particular size or description, provided that it was of a kind sufficiently durable to be adapted for record; but they clearly would be justified in refusing permission to the filing of a document written upon paper obviously unfitted for this purpose. If due notice be given that such a discretion will be exercised whenever necessary, and at the same time that paper of an approved quality can be obtained from the stamp vendor attached to each court, it is not likely that the public will refuse to make use of it.

4. The Court direct therefore that all Judges, Judicial Commissioners, and Magistrates of districts will have a notice to the above effect put up in some conspicuous place in their courts, and that they will instruct their respective subordinates to do so likewise. The price at which this paper will be sold should be mentioned in the notices above referred to. The Superintendent of Stationery should also be communicated with, through the Collector of the district, as to the quantity of paper that will be required, which, at the outset, will probably not be large. This, however, will mainly depend upon the stock of impressed stamp paper in each district, and on this point the Court have no information.—(*C. O.*, 1872, *No.* 22, *June* 28*th.*)

FORM OF CERTIFICATE FOR REFUND.

The following form of certificate for the refund of stamp duty is forwarded herewith [Circular Order, 1867, No. 28, September 13th] for adoption by all civil courts in Bengal in passing for payment at the Civil Treasury the stamp duty refunded in cases adjusted by compromise or demanded for re-trial. The form will be supplied by the Superintendent of Stationery on indents.

1	2	3	4	5	6	7
DISTRICT OF	CERTIFICATE FOR THE REFUND OF THE STAMP FEES LEVIED ON THE PETITION SPECIFIED BELOW.					*Voucher No.* *of* *List of Payment*
Head of Service chargeable.	3—ALLOWANCES, REFUNDS, AND DRAWBACKS:— REVENUE REFUNDS—STAMP DUTY.					*for* 186 .
Number of suit or petition, and names of the parties.	Value of stamp and description of paper.	Amount of claim in suit.	Names of the parties receiving refunds.	Amount to be refunded.	Stamp vendor's endorsement.	Under what regulation, section, and clause the amount is refunded.

*The*_____186 . | Certified that_____or his order is entitled under the order of the_____ _____Court of_____dated the_____186 to the above refund of Rs._____

To THE COLLECTOR OF

*Claimant's Signature*_____

Pay Rupees Net

The _____186 .

*Examined*_____*Accountant.* *Officer in charge of Treasury.* *Judge or other Officer.*

District Judge's jurisdiction as to probates, certificates of administration, certificates of representation, and other testamentary and succession matters.

FORM FOR CERTIFICATE UNDER ACT XL OF 1858, OF ADMINISTRATION OVER MINOR'S ESTATE.

Form of application prescribed.

It is ordered that every application for a certificate under Act XL of 1858 shall be in the form appended hereto, with such variations as the circumstances of each case may require, and that the certificate shall in every case show the date on which it will cease to have effect.—(*C. O.*, 1876, *No.* 2, *January* 28*th.*)

IN THE CIVIL COURT OF THE DISTRICT OF

To

——————————————Esq.,

District Judge of——————————————

Dated——————*the*——————————*of* 18 .

The humble petition of——————————,

——————————————————————,

Son of——————————————————,

resident of——————————————————,

District——————————————————:

SHEWETH,

That A. B., son of C. D., resident of District , is entitled to the property specified in the schedule hereunto annexed, and marked, A. (*or to a one-fourth share thereof, or as the case may be*), as the son and heir (*or as one of the four sons, or as the case may be*) of E. F., deceased (*or as a legatee under the will of E. F., deceased, or under a deed dated and made by E. F., or state how otherwise.*)

That the value of the said property (*or of the said A. B.'s share therein*) is correctly set forth in the said Schedule A.

That the said A. B. is a minor, being of the age of years, months and days.

That your petitioner is (*state the degree of relationship to, or connection with, the minor, or how otherwise the petitioner claims to be entitled to have charge of the minor's property*).

That your petitioner as such next of kin (*or state how otherwise*) claims to have charge of the said property in trust for the said A. B. during his minority.

That your petitioner therefore prays that a certificate of administration under section 3 of Act XL of 1858 may be granted to him.

And your petitioner as in duty bound, &c.

I, the petitioner named in the above petition, do solemnly affirm that what is stated therein is true to the best of my information and belief.

(*Signature of Petitioner.*)

Solemnly affirmed this day of 18 , before me.

District Judge.

Actual Certificate to be taken out, not mere certified copy of order for certificate. This last to be withheld until other taken out.

As there is reason to believe that it is becoming a practice for applicants for certificates under Act XXVII of 1860 [*certificate of representation for estate of deceased, Hindu or Mussulman*] and Act XL of 1858 [*certificate of administration over minor's estate*] to refrain from taking out the certificates after the courts have passed orders for the issue of such, and to take out instead only certified copies of the said orders, thereby occasioning a loss of stamp revenue, the Court direct that no copies of the judgment or decision of the courts in certificate cases be granted unless the certificate has been previously issued.—(*C. O.*, 1870, *No.* 17, *June* 23*rd. Enquiry as to operation of this order in C. M.* 1873, *No.* 7, *May* 13*th.*)

Forms of Certificate under Act XL of 1858, to administer minor's estate.

Form of Certificate under Section 7, *Act XL of* 1858.

[Prescribed by Circular order, 1859, No. 150, August 31st.]

Whereas this Court has, under the provisions of section 7, Act XL of 1858, been pleased to appoint you A. B. to administer to the estate of C. D., at present a minor, during the period of his minority, to wit, till the of the month of 18 being the termination of the said minority* subject to the power of revocation vested in the Court by section 21 of the Act aforesaid, you are hereby authorized to take charge of the property of the minor in trust, to collect and pay all

[* See Circular Order, 1876, No. 2, page 172.]

just debts, claims, and liabilities due to or by the estate of the minor, to institute or defend suits connected with that estate, and generally to do and perform all acts which may be necessary to the due discharge of the trust vested in you ; provided always that you shall not sell or mortgage any part of the estate belonging to the minor, and that you shall not grant any lease for a term exceeding five years, without the express sanction of this Court, previously obtained ; and that you shall keep regular accounts of your receipts and disbursements with all vouchers and other documents necessary to establish their correctness. (If the person administering is himself appointed guardian, then it should be "you are hereby further appointed guardian of the minor's person and authorized to expend rupees monthly on account of his maintenance and education.")

Form of Certificate under Section 10, *Act XL of* 1858.

Whereas this Court has, under the provisions of section 10, Act XL of 1858, appointed you, A.B., to be public curator (or administrator) of the personal estate, including houses, gardens, and the like, belonging to C. D., a minor, and to continue to administer to such estate during his minority, to wit, till the of the month of 18 , being the date of the said minority terminating,* at a salary of Rupees or commission at per cent. on all sums received and disbursed by you on account of the minor, subject to the power of revocation vested in the Court, you are hereby authorized to take charge of the aforesaid minor's property, to institute and defend all actions in connection with the property, and to do and perform all acts necessary to the due discharge of the trust vested in you ; you are to deliver into this Court, within six months from this date, an inventory of the immoveable property belonging to the said C. D., and of all such sums of money, goods, and effects as you may have received on account of his moveable estate, together with a statement of all debts ascertained or believed to be due to the said estate.

You are within three months after close of the current year, and of every succeeding year that you shall retain charge of the property of C. D., and also within three months of the termination of your trust, to furnish to this Court an accurate account of the property in your charge, and the sums received and disbursed on account thereof, and the balance in hand, together with the vouchers and other documents necessary to support the account. You are to exercise the same powers in regard to the management of the said property as might be exercised by the proprietor were he not a minor, and to collect and pay all just debts on account thereof. But you are not to sell or mortgage any part of the immovable property, nor to grant any lease thereof for a term exceeding five years without the express orders of this Court previously obtained. You are hereby further authorized to pay Rupees monthly on account of the minor's education and maintenance to X.Y.Z., appointed his (or her) guardian under the orders of this Court dated

[* See Circular Order, 1876, No. 2, page 172.]

Form of Certificate under Section 7 (*or Section* 11), *Act XL of* 1858.

Whereas under section 7 (or section 11), Act XL of 1858, you have been appointed to be guardian of C. D., now a minor, during the period of his minority, to wit, till the of the month of , being the date of the said minority (*a*) terminating, or until this certificate be revoked, you are hereby required to take charge of the person of the said minor, and to provide suitably for his maintenance and education, for which purpose you will receive from the public curator (or administrator of the estate) a monthly sum of Rupees , and you are hereby authorized to receive a personal allowance of Rupees per mensem as a remuneration for your trouble and responsibility.

Form of Certificate of Representation under Act XXVII of 1860.

[*Form prescribed by Circular Order*, 1860, *No.* 60, *August* 6*th*, *amending Circular Order*, 1856, *No.* 90, *December* 4*th*.]

To

A. B.

Whereas, in pursuance of the orders of this Court dated in the matter of the estate of the late this certificate is granted to you, agreeably to the provisions of Act XXVII of 1860, you are hereby authorized and empowered to collect all debts due to the estate of the said giving acquittances for all sums received by you.

You are further empowered to receive interest on the Government notes and dividends noted in the margin,* and on the Bank shares marginally† noted or parts thereof, due to the said estate, and to negotiate such securities. You are also empowered to receive any share or shares of such interest or dividends that may be due to the said estate, and to negotiate such share or shares.

* Government Promissory Notes No. of 18 of the per cent. loans for Rs.

† Share Certificates No. of 18 of the Bank, &c.

You shall further adhere strictly to such laws as have been or may be passed by the Governor-General in Council for the guidance of persons holding certificates for the collection of debts due to the estate of the deceased persons.

Seal

Judge.

[(*a*) See Circular Order, 1876, No. 2, page 172.]

FORM OF CERTIFICATE.

To

A. B.

Whereas, in pursuance of the orders of this Court, dated
in the matter of the estate of the late
this certificate is granted to you, agreeably to the provisions of Act XXVII of 1860, you are hereby authorized and empowered to collect all debts due to the estate of the said
giving acquittances for all sums received by you.

You are further empowered to receive interest in the Government notes and dividends noted in the margin,* and on the Bank shares marginally† noted or parts thereof, due to the said estate. You are also empowered to receive any share or shares of such interest or dividends that may be due to the said estate.

* Government Promissory Notes
No.
of 18
of the per cent. loan
for Rs.

† Share Certificates
No.
of 18
of the Bank, &c

You shall further adhere strictly to such laws as have been or may be passed by the Governor-General in Council for the guidance of persons holding certificates for the collection of debts due to the estate of the deceased persons.

Seal.

Judge.

Precautions to be observed in the grant of Certificates under Act XXVII of 1860.

I am directed to draw your attention to the accompanying copies of the papers noted in the margin, relative to the fraudulent withdrawal of deposits of old standing and of large amount from the Mymensingh Collectorate by means of forgery and false personation.

Letter No. 730A of the 15th December 1875, from the Officiating Secretary to the Board of Revenue, Lower Provinces, to the Secretary to the Government of Bengal, Revenue Department, and enclosures.

2. One of the causes which rendered the fraud possible was the practice which prevailed in Mymensingh, and may exist elsewhere, of treating the grant of a certificate under

Act XXVII of 1860 as a merely formal matter, although the Court has always impressed it on District Judges that the jurisdiction in question is one of great importance, and should always be exercised with precaution and after careful inquiry.

3. The Court now directs that in all cases where a claim against the Government is involved, or where, from the time which has elapsed since the death of the person in respect of whose estate a certificate is required, or from any other cause, it may appear desirable, notice shall be given to the Government Pleader for the Collector's information.

Also that no certificate shall be taken to apply to the recovery of a claim against the Government, unless such claim shall be expressly recited therein.

4. Act XXVII of 1860 contains no provision which authorises the reference to a subordinate court for enquiry or report. Such reference is therefore irregular and is forbidden accordingly, and the practice of sending the witnesses in any particular case before another Judge for examination is in every way objectionable.—(*G. L.*, 1876, *No.* 8, *May 27th.*)

Annual Accounts from holders of Certificates.

As the High Court have reason [1865] to believe that the accounts required by Act XL of 1858, section 16, from the public curator and parties holding certificates of administration under section 10 of that Act have not been furnished annually, the Court are pleased to call the attention of all Judges to the provisions of that law, and to point out that if these accounts have not heretofore been regularly furnished, they should be demanded without delay. The Court expect that for the future all parties holding such certificates will be required to furnish them regularly, and that, if they fail to do so, they be dealt with under sections 21 and 22 of the Act.

The provisions of section 17 of the Act should also be most carefully attended to. Attention is also called to the requirement of article 12, Schedule I of Act VII of 1870, which, the Court are informed, is not generally acted up to. Its provisions should be invariably strictly enforced, so that the Government is not defrauded of its stamp revenue.—(*C. O.*, 1865, *No.* 25, *September 15th.*)

In continuation of circular order No. 25, dated 15th September last, the Court are pleased to point out that when a certificate of administration is granted under Act XL of 1858 to any person *entitled* to have charge of the property of a minor by virtue of a will or deed, or to any relative (section 7), such relative or other person is not required to file annual accounts under section 16, inasmuch as that section only applies to the public curator and other administrators to whom a certificate may have been granted under section 10.

2. But under section 21 the civil court *for any sufficient cause* may recall *any certificate granted under the Act*, and may *then* compel the person whose certificate has been recalled to make over the property in his hands to his successor (to whom the Court has the power of granting a fresh certificate), and to account to such successor for all moneys received and disbursed by him, and on the neglect or refusal of such person to deliver his accounts and property in his hands, the Court, under section 22, may impose on him a fine not exceeding Rs. 500, realizable by attachment and sale of property, and may commit the recusant to close custody until he shall consent to deliver such account or property. Thus the Court has power, though not identical in both cases, over administrators under section 7, as well as over those under section 10.

3. The Court desire to add that, although administrators under Act XL of 1858, other than public curators and others appointed under section 10, cannot be required to furnish accounts annually, yet they are bound to keep regular accounts (for they may be sued, section 19, and compelled to produce them); and the Court draw attention to the duty rightly enjoined upon them in the certificates for which form A* of circular order No. 150, dated 31st August 1859, has been provided. Zillah Judges should omit no opportunity of reminding such persons of the duty of keeping accounts and of exercising a proper economy in carrying out their trusts.—(*C. O.*, 1866, *No.* 19, *May* 16*th.*)

* Last form on page 176.

FORM PRESCRIBED BY C. O, 1871, No. 20, OF 13TH JULY, C M., 1872, No. 11, OF 3RD JUNE, FOR ANNUAL RETURN, GIVING STATISTICS OF

Probates and Letters of Administration under Act X of 1865, *Part XXXI, and Certificates under Act XXVII of* 1860, *issued in the District of*

DECLARED VALUE OF ASSETS OF ESTATE.	Number of probates or letters of administration with will annexed.	Amount of court fees paid.	Number of letters of administration without will annexed.	Amount of court fees paid.	Number of certificates under Act XXVII of 1860.	Amount of court fees paid.	TOTAL: Number of probates, letters, and certificates.	TOTAL: Amount of court fees paid.	Number of letters of administration cancelled, and fresh letters issued in lieu of the original.	REMARKS.
Above Rs. 1,000 up to Rs. 5,000 ...										
„ „ 5,000 up to „ 10,000 ...										
„ „ 10,000 up to „ 50,000 ...										
„ „ 50,000 up to „ 1,00,000 ...										
„ „ 1,00,000										

Note.—It will not be necessary to include in the annual return in question any probates, letters, or certificates where the amount or value of the property "does not exceed one thousand rupees," no fee being chargeable in such cases—Clause VIII, section 19, Court Fees' Act (VII) of 1870.—(*Vide* C. M., 1872, No. 11, June 3rd.)

[Also Circular order just cited directs that suitable chronological registers be opened, from which at the end of the year the data above required can be compiled.]

Rules relating to the custody and preservation of Wills at Judge's Court under Act X of 1865 (*C. O.*, 1867, *No.* 34, *December* 3*rd.*)

1. All original wills presented to a District Judge in accordance with the provisions of section 244, and probate or letters of administration of which have been granted under sections 254 and 255, Act X of 1865, shall be committed to the care of the head clerk or chief ministerial officer of the Judge's court, who shall be responsible for their safe custody.

2. The said officer shall, on the receipt of each original will, cause a copy of the same to be carefully entered in a register to be kept for that purpose, and shall also cause to be prepared an alphabetical index, in which the name of the testator, &c., and the number and page of the register in which a copy of the will is entered, shall be recorded in the annexed form :—

Name of Testator.	Residence, &c.	Number and year of register.	Page.

3. The original wills shall be deposited in a fire-proof safe, which shall be kept in the office room of the head clerk, or other officer aforesaid, to whom the safe custody of the wills may have been entrusted, or in some other safe place in which the records of the Judge's court are ordinarily kept.

Relating to the inspection of Wills.

4. Every inspection of original wills or the registers thereof, as well as applications for copies of wills, shall be

made within the hours fixed by the Judge, and published by a notification posted in a conspicuous place in the court, and shall be subject to the following conditions.

5. The inspection of an original will shall be allowed only on the written order of the Judge previously obtained, and shall take place in the presence of the head clerk or other officer who may have charge of the same, and that officer shall be responsible for the will not being taken out of his sight during such inspection, and also that no erasures or alterations are made in it.

6. Application for a copy of an original will shall be submitted to the Judge, and such copy shall only be granted subject to the conditions which attach to the inspection of original wills.

7. The following fees shall be charged for the inspection of wills, &c.:—

(1)—For the inspection of an original will—1 rupee.

(2)—For the inspection of a copy of a will in the register—8 annas.

(3)—For copies the same fee as for inspection, in addition to the copying charges, which shall be at the usual rate obtaining in the civil courts.

8. A separate register shall be kept for the entry of all applications for copies or inspection of wills and registers, in which shall be recorded the names of the applicants and the amount of fees paid by them in each case.

9. The fees shall be at the disposal of Government, who shall assign such remuneration as it shall think proper in each case to the officer entrusted with the custody of the wills.

Quarterly Return of Probates and Letters of Administration granted under the Indian Succession Act, X of 1865.

A quarterly return in the annexed form (contemporaneous with the quarterly civil returns shall be made by all District Judges to the High Court of all grants of probate and letters of administration made in accordance with the provisions of Part XXXI of Act X of 1865. The return should contain the name and description of the deceased person and of the persons who have been granted letters of administration, and in probate cases of all the executors named in the will.—(*C. O.*, 1867, *No.* 32, *September* 28*th.*)

Return of grants of probate and letters of administration made by the District Judge of under the provisions of Part XXXI of Act X of 1865 *for the quarter ending*

Name and profession of deceased person.	Name and profession of persons to whom probate or letters of administration were granted.	Names of all the executors in the will in probate cases.	Date of grant.

Intestate Property, Unclaimed Property, &c.

Instructions as to "lawaris" property.

(*C. O.*, 1837, *No.* 219, *December* 15*th.*)

It having been brought to the notice of the Sudder Court that considerable difference of opinion and practice prevails as to the manner of disposing of "lawaris" property, they communicate to the civil and criminal authorities subordinate to them the following observations on the subject:—

Lawaris not to be confounded with unclaimed property.

2. The Court observe that the difficulty appears to arise from the Magistrates confounding "unclaimed property" with "the property of persons dying intestate" (lawaris.) With regard to the former, I am directed to refer you to clause 16, section 16,* Regulation XX of 1817, which expressly declares that it shall be considered the property of Government; and that whatever property of that description may come into the hands of the *darogahs* of police, shall be forwarded to the Magistrate of the district. As respects such property, therefore, the disposal of it clearly rests with the Magistrate, subject of course to the control of the Commissioner and Government, without any interference on the part of the civil court.

* Repealed by Act XVII of 1862. Re-enacted in Act V of 1861, sections 25 to 27.

Rule as to custody and disposal of lawaris property.

3. With regard to the custody and disposal, on the other hand, of the property of persons dying intestate (*lawaris*), the Court observe that section 7, Regulation V of 1799, Bengal Code, contains a specific provision, and declares that, should no claim be preferred to it for the space of twelve months, an inventory of the property, together with a report of the circumstances of the case, should be submitted by the Judge to the Governor-General in Council for his orders. Whenever, therefore, any property of that description may come into the hands of a Magistrate, he should forward it immediately to the Judge of the district, to be dealt with in the manner directed in the section of the Regulation above quoted.—(*C. O.*, 1837, *No.* 219, *December* 15*th.*)

Instead of an inventory in each case a general statement to be annually submitted to Government.

The Sudder Court direct, in pursuance of instructions from the Government, that in lieu of a separate inventory in each instance of property of intestatesun claimed upwards of twelve months, the Judge will in future submit to the Government, at the close of every year, a general statement of all property of the kind which may be in his custody for a period exceeding twelve months after the issue of notice for the appearance of heirs or claimants.—(*C. O.*, 1851, *No.* 74, *January 3rd.*)

Claims of creditors on "lawaris" property Suits not to be instituted before expiration of 12 *months*

To remove doubts regarding the disposal of claims of creditors on the property of persons who die intestate, no heirs being forthcoming, the Sudder Court are pleased to declare that no suit can be instituted for the establishment of such claims before the expiration of the twelve months specified in section 7, Regulation V of 1799.—(*C. O.*, 1845, *No.* 80, *February* 14*th.*)

Claims preferred within that time how to be dealt with.

Any claims on such property which may be preferred to the Judge within the limited time, should, in the event of the property being carried to the credit of Government at its close, be reported to the Government for its orders. Should the claims be rejected, the claimants will be at liberty

to bring a regular suit against the Government in the courts of justice.—(*C. O.*, 1845, *No.* 80, *February* 14*th.*)

Expense of conveying intestate property to Sudder Station.

The practice which obtains in certain districts for the nazir to pay for the conveyance of intestate property to the sudder station from any ready money that is received as part of such property, or when there happens to be no ready money, from any other funds in his charge, being objectionable, the Court direct, with the sanction of Government, that the Judge will in future pay such expenses from his treasury, and charge the same in his contingent bill, subject to reimbursement from the eventual proceeds of the sale of the property, or in cases where a claim to heirship is established, either by payment by the heir before the property is delivered to him, or by the sale of such portion of the property as may cover the expense.—(*C. O.*, 1846, *No.* 128, *May* 16*th.*)

Property of intestates. Period for appearance of claimants how to be reckoned.

The period of 12 months allowed by section 7, Regulation V of 1799, for the appearance of claimants to the property of persons dying intestate, shall be calculated, not from the date of the proprietor's decease, but from the date on which the publication of the several advertisements required by the law cited shall be duly certified.—(*C. O.*, 1846, *No.* 144, *December* 23*rd.*)

RULES OF PRACTICE.

Issue of summons; its contents.

1*st June* 1861.—By virtue of the powers vested in the Sudder Court [High Court] under section 20 of Act XLII of 1860 [section 46, Act XI of 1865] the following are laid down as the rules of practice for Courts of Small Causes :—

I.—On presentation of a plaint, and verification in accordance with sections 25, 26, 27, and 28 of Act VIII of 1859, the Court shall issue, under the seal of the Court, a summons in the form prescribed in Schedule B of Act VIII of 1859, which shall be numbered and dated of the day when issued, and shall set forth the names of the plaintiff and defendant, the cause of action, and the amount sued for

Time of service. When returnable.

II.—The summons shall be served on the defendant seven clear days before the day on which the court shall be holden at which the cause is to be tried, unless the court shall otherwise order ; but a summons may be made returnable at a longer or a shorter date in the discretion of the court, with reference to distance or to any other cause.

Receipt or plaint-note.

III.—A receipt or plaint-note shall, on the filing of the plaint, be given to the plaintiff, containing the number of the summons and of the suit in the register book, and no execution shall be issued, nor any money paid out of court, except on production of the said receipt, or by order of the Judge.

Summons book and register.

IV.—The cause of action shall be transcribed from the plaint into the summons books, and the substance of the cause of action shall be entered in the register book; both books shall be in the form hereto annexed, and marked A and B.

Misnomer or error of description in summons.

V.—No misnomer or inaccurate description of any person or place in any such summons shall vitiate the same, if the person or place be therein described, so as to be commonly known.

What to be entered in summons book.

VI.—The substance of the evidence, the judgment, and the decree shall be entered in the summons book, as in form A given in the schedule.

A.

SMALL CAUSE COURT OF

SUMMONS BOOK.

Amount of stamp	Rs.	A.	P.	Date of summons No. of ditto Register No. Plaintiff's name	Particulars of demand, &c.
				Defendant's name ...	
				Cause of action ...	
				Amount	
				Defence	

PEON

Substance of evidence.

Note.—On the reverse side will appear the judgment and decree.

B.

COURT OF SMALL CAUSES of *Holden at* *Register of Causes,*
in the year 18

Date of presentation of plaint.	No. of suit.	Plaintiff.			Defendant.			Particulars.	Claim.		Appearance.			Judgment.			Execution.						Return of Execution.
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.		Amount or value.	When the cause of action accrued.	Day for parties to appear.	Plaintiffs.*	Defendants.*	Date.	For whom.	For what or amount.	Date of application.	Date of order.	Against whom.	For what and amount of money.	Amount of costs.	Amount paid into court.	Arrested.	Minute of other return than payment or arrest and date of every return.
									Rs. A. P.							Rs. A. P.				Rs. A. P.	Rs. A. P.	Rs. A. P.		

* Here enter whether plaintiff, or defendant, as the case may be, appears on the date fixed.

[The High Court is pleased to direct that every Subordinate Judge and Moonsiff, vested under section 29, Act VI of 1871, with the jurisdiction of a Judge of a Court of Small Causes, whatever the pecuniary limits assigned, shall use the summons book and register* in use in Small Cause Courts for purposes of record in connection with cases tried under such powers.—(*C. O.*, 1875, *No.* 7, *June* 12*th.*)]

Order for payment in instalments. Mode of execution.

VII.—When any order is made for the payment of any debt or damages, costs, or other sums of money by instalments, the same shall be payable at the office of the clerk, at such periods as the court shall order; and if no order be made fixing the dates of payments of the instalments, then the first instalment shall become due at the expiration of one calendar month from the day of making the order, and every successive instalment at a like period of one calendar month from the day of the previous instalments becoming due; and after default in payment of any instalment, execution may be sued out for the whole amount then remaining unpaid, unless the court shall otherwise order: provided that such execution shall not issue upon such default if the instalment or instalments then due shall be paid into court at any time before execution is applied for.

Application for new trial.

VIII.—On an application for a new trial under section 21, Act XI of 1865, the mode of procedure prescribed by section 378 of Act VIII of 1856, for disposing of applications for reviews of judgment, shall be followed.

[When a new trial has been granted by a Judge of a Court of Small Causes under section 21, Act XI of 1865, the filing of a fresh plaint should not be required.—(*C. O.*, 1872, *No.* 3, *January* 26*th.*)]

When defendant deposits sum decreed and moves for new trial.

IX.—In cases in which the defendant has moved the court for a new trial, and has deposited the sum decreed against him, the court shall detain the money till the new trial be granted, or till such other time as the court shall order. In the event of notice not being given to the court as aforesaid, or of the rule being refused, the plaintiff may take the money out of the court without further delay.

Duty of plaintiff. Consequence of default.

X.—If the court be of opinion that a new trial should be granted, the plaintiff shall proceed to set his cause down for rehearing within six days, unless some other time be granted by the court, and in default the defendant shall be at liberty to withdraw his deposit. Should the new trial be granted, the order shall be made on such terms as to the

* *Vide* pages 186 and 187.

payment of costs as the court shall direct. If on the hearing of the second trial the verdict is entered for the plaintiff, the judgment may be satisfied *pro tanto* out of the sum already deposited for debt and costs by defendant, with right of execution against the goods or person of the defendant for the amount payable by the defendant over and above the sum deposited.

Verdict for defendants. Withdrawal of deposit.

XI.—If on the hearing of the second trial the verdict is entered for the defendant, he shall be at liberty to withdraw his deposit.

Warrants of execution.

XII.—No warrant of execution or commitment shall be executed after the expiration of two calendar months from the date thereof: provided that second and successive warrants of execution may be issued by order of the Judge at the expiration of two calendar months from the date of each, on payment of the prescribed costs of execution by the party issuing out the same.

Unexecuted warrant. Proceeds of execution.

XIII.—Every officer required to execute any warrant of execution, if he shall not have executed such warrant, shall return the same to the office of the court at the expiration of one month from the date of the issue thereof; and every officer levying or receiving money by virtue of any process out of the court, shall forthwith, or as soon after the receipt thereof as practicable, pay over the same to the court.

Pleaders in Small Cause Courts.

XIV.—No person can be permitted to practise as a pleader in the Courts of Small Causes in the Lower Provinces unless he holds a diploma, or has passed the examination test for the higher or lower grades of pleaders in the civil courts.*

Forms.

XV.—The forms (*a*) in the *schedule hereunto* annexed are prescribed for use in the Courts of Small Causes:—

SCHEDULE OF FORMS.

No. A-1 (2.)—Summons to defendant under section 41, Act VIII of 1859.

No. A-2 (2.)—Summons to defendant under sections 41 and 42, Act VIII of 1859.

No. A-3 (2.)—Summons to defendant under sections 41 and 43, Act VIII of 1859.

No. A-4 (2.)—Summons to defendant under sections 41, 42, and 43, Act VIII of 1859.

No. 4 (A.)—Form of Judge's order of reference to an arbitrator.

No. B (1)—Warrant of arrest of the defendant before judgment under section 75, Act VIII of 1859.

No. B (2.)—Writ of execution of decree under section 222 of Act VIII of 1859.

* See the Rules passed by the High Court under section 4, Act XX of 1865.—*Vide* page 105.

No. C (1.)—Hazir-zamin or bail under section 76 of Act VIII of 1859.
No. C (2.)—Form of mal-zamin bond under sections 81 and 83 of Act VIII of 1859.
No. D (1.)—Warrant to nazir under section 43 of Act VIII of 1859.
No. D (2.)—Warrant to nazir under section 83 of Act VIII of 1859.
No. D (3.)—Warrant to nazir under section 84 of Act VIII of 1859.
No. E.—Certificate of refund of stamp duty of the petition of plaint noted below under section 98 of Act VIII of 1859.
No. F (1.)—Notice under section 107 of Act VIII of 1859.
No. F (2.)—Notice to defendant under section 113 of Act VIII of 1859.
No. F (3.)—Notice under section 163 of Act VIII of 1859.
No. F-4 (1.)—Notice to judgment-debtor under section 216, Act VIII of 1859.
No. F-4 (2.)—Notice to the heir or representative of the judgment-debtor under section 216, Act VIII of 1859.
No. F-5 (1.)—Notice to decree-holder under section 274, Act VIII of 1859.
No. F-5 (2.)—Notice to decree-holder under section 274, Act VIII of 1859.
No. F-6.—Notice to the opposite party under section 305, Act VIII of 1859.
No. G.—Deposition.
No. H (1.)—Summons on a witness under section 152, Act VIII of 1859.
No. H (2.)—Summons to produce documents under section 153, Act VIII of 1859.
No. I-2.—Warrant of attachment under section 159, Act VIII of 1859.
No. J-1.—Warrant of arrest of witness under section 168, Act VIII of 1859.
No. J-2.—Warrant of attachment under section 168, Act VIII of 1859.
No. K-2.—Decree.
No. N.—Proclamation of sale under section 249, Act VIII of 1859.
No. P.—Warrant of attachment and sale of judgment-debtor's property in execution of decree under section 250, Act VIII of 1859.
No. P.—Auction certificate under section 259, Act VIII of 1859.
Notice on application for a new trial.
Order for a new trial.
Form of commission.
Warrant to arrest for contempt.
Form of receipt.

SCHEDULE OF FORMS.

No. A-1 (2).

Summons to Defendant under Section 41, *Act VIII of* 1859.

SUIT No. OF 18 A.D.

IN THE SMALL CAUSE COURT OF

Plaintiff,

versus

Defendant,

Inhabitant of

Whereas plaintiff, inhabitant of on the day of 18 A.D. instituted a suit in this court against you for and whereas day of the month of A. D., corresponding with 12 B. S, has been fixed for the *final disposal* of the suit: You are hereby summoned to appear and answer the claim in this court on the above day at the hour of in the forenoon, in person, or by a pleader of the court duly instructed and able to answer all

material questions relating to the suit, or by a pleader who shall be accompanied by some other person able to answer all such questions: And you are hereby required to take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence: And you are further required to bring with you, or send by your agent, any document on which you intend to rely in support of your defence; and you must be prepared to produce all your witnesses on that day.

No. A-2 (2).

Summons to Defendant under Sections 41 *and* 42, *Act VIII of* 1859.

SUIT No. OF 18 A.D.

IN THE SMALL CAUSE COURT OF

Plaintiff,

versus

Defendant,

Inhabitant of

Whereas

inhabitant of

plaintiff, on the day of 18· A.D., instituted a suit in this court against you for , and whereas day of the month of 18 A.D., corresponding with 12 B. S., has been fixed for the final disposal of the suit: You are hereby summoned to appear and answer the claim in this court in person on the above date at the hour of in the forenoon. You are also required to take notice that, in default of your appearance on the day before mentioned, the suit will be tried and decided in your absence; and you will bring with you any document on which you intend to rely in support of your defence, and be prepared to produce all your witnesses on that day.

No. A-3 (2).

Summons to Defendant under Sections 41 *and* 43, *Act VIII of* 1859

SUIT No. OF 18 A.D.

IN THE SMALL CAUSE COURT OF

Plaintiff,

versus

Defendant,

Inhabitant of

Whereas

inhabitant of

plaintiff, on the day of 18 A.D., instituted a suit in this court against you for and demanded for the inspection of the court

documents in your possession or power; and whereas day of the month of 18 A.D., corresponding with 12 B S., has been fixed for the *final disposal of the suit:* You are hereby summoned to appear and answer the claim in this court on the above day at the hour of in the forenoon, in person, or by a pleader of the court duly instructed and able to answer all material questions relating to the suit, or by a pleader who shall be accompanied by some other person able to answer all such questions. You are hereby further required to take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence. You will bring with you or send by your agent documents in your possession or power, which the plaintiff demands for the inspection of the court, besides those on which you intend to rely in support of your defence; and you must be prepared to produce all your witnesses on that day.

No. A-4 (2).

Summons to Defendant under Sections 41, 42 *and* 43, *Act VIII of* 1859.

SUIT No. OF 18 A. D.

IN THE SMALL CAUSE COURT OF

Plaintiff,

versus

Defendant,

Inhabitant of

Whereas

inhabitant of

Plaintiff,

on the day of 18 A. D., instituted a suit in this court against you for and demanded for inspection of the court the documents in your possession or power , and whereas day of the month of 18 A. D., corresponding with 12 B. S., has been fixed for the final disposal of the suit, and your personal attendance in court on the said day is considered necessary: You are hereby summoned to appear in this court in person on the said day of at the hour of in the forenoon, to answer to the plaintiff's claim; and you are hereby required to take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence; and you will bring with you any documents on which you intend to rely in support of your defence, and also the documents in your possession or power, of which the plaintiff demands inspection of the court; and you must be prepared to produce your witnesses on that day.

No. 4 (*A*).

Form of Judge's Order of Reference to an Arbitrator.

In the Court of Small Causes.

Between { Plaintiff, and Defendant.

Upon consent of the said parties, I order that all matters in difference in this cause be referred to the award, order, arbitrament, final end, and determination of , so as he shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the clerk of the said court, on or before the day of now next ensuing, or on or before such further or ulterior day to which he may, by endorsement hereon, enlarge the time for making his award. And by the like consent I further order that the costs of the said cause shall abide the event of the said award, and that the costs of the reference and award shall be in the discretion of the said arbitrator. And by the like consent I further order that the said arbitrator shall be at liberty (if he shall think fit) to examine the said parties to this suit and their respective witnesses upon oath, and that the said parties shall and do produce before the said arbitrator all books, deeds, papers, and writings in their or either of their custody or power, relating to the matters in difference. And I further order, by and with such consent as aforesaid, that neither the plaintiff nor the defendant shall bring or prosecute any action or suit at law or in equity against the said arbitrator, or prefer any bill in equity against each other, of and concerning the matter so as aforesaid referred, and that if either party shall, by affected delay or otherwise, wilfully prevent the said arbitrator from making an award, he shall pay such costs to the other as the court shall think reasonable and just. Given under the seal of the court this day of 18

Book
Page
Bailiff

Judge of the said Court.

No. B (1).

Warrant of Arrest of the Defendant before Judgment under Section 75, Act VIII of 1859.

Suit No. of 18 A. D.

To of

Plaintiff,

versus

Defendant.

Suit.

Whereas the plaintiff in the above suit, has made an application under section 74, of Act VIII of 1859,

that security be taken for the appearance of the defendant to answer any judgment that may be passed against him in the suit, and whereas, from the investigation that has been made, there is probable cause for believing that the defendant is about to leave the jurisdiction of the court, &c., and it being necessary to bring the defendant before the court that he may show cause why he should not give good and sufficient bail for his appearance; you are hereby required to bring the said defendant before this court on or before the day of 18

No. B (2.)

Writ for Execution of Decree under Section 222 of Act VIII of 1859.

SUIT No. OF 18 A. D.

To

Inhabitant of Decree-holder,

versus

Inhabitant of Judgment-debtor.

SUIT.

Whereas
decree-holder has made an application for the execution of decree of a court made on the
for Rs.
and costs
amounting to Rs.
by the apprehension and imprisonment of the person of the judgment-debtor, and whereas upon comparison the said application has been found to correspond with the original decree contained in the record of the suit, you are hereby directed that, should the said
judgment-debtor fail to pay to you the whole amount aforesaid, together with the costs of execution of this process, you will produce the said judgment-debtor before this court on or before
day of
to be dealt with according to law.

No. C (1.)

Hazir-Zamin or Bail under Section 76 of Act VIII of 1859.

To

The of Zillah

I,
do hereby execute this "hazir-zamin" or bail-bond to the following effect: Inhabitant of
plaintiff, has instituted a suit No. of 18 in this court against defendant for the recovery of Rs.
and presented a petition under section 74 of Act VIII of 1859, that security be taken for the appearance of the defendant to answer any judgment that may be passed against him in the above suit, and whereas an order has been passed for the defendant to furnish surety for his appearance, I do therefore, agreeably to section 76 of the said

law, tender myself as surety for the appearance of the defendant, and declare and undertake to produce him at any time when called upon by the court while the suit is pending, and until execution or satisfaction of any decree that may be passed against him; and in default of such appearance to pay any sum of money that may be adjudged against the defendant with costs. Under these terms I do hereby execute this bail-bond.

No. C (2).

Form of Mal-Zamin Bond under Sections 81 *and* 83, *Act VIII of* 1859.

To

The

of Zillah

I

do hereby execute this mâl-zamin bond to the following effect:

Whereas

inhabitant of

plaintiff instituted a suit No. of 18 A. D., in this court against defendant on the and made an application under section 81 of Act VIII of 1859 to call upon the defendant to furnish sufficient security to fulfil any decree that may be passed against him in the above suit, and whereas an order was issued on the day of calling upon the defendant to furnish "mâl-zamin" security in the sum of to prevent his disposing of or removing the property noted below: I therefore of my free will do tender property and bind myself as his surety, and also covenant and agree that the defendant shall, when required by the court, produce and place at its disposal the whole of the property specified below, or the value of the same, or such portion thereof as may be sufficient to fulfil the decree; that in default thereof, I and my heirs will be held responsible for the above amount; and if the property pledged by this security be insufficient to meet the demand, my person and property will be liable for it. Under these terms I do hereby execute this mâl-zamin bond.

No. D (1.)

Warrant to Nazir under Section 43 *of Act VIII of* 1859.

Suit No. of 18 A. D.

In the Court of Zillah

To

Nazir.

Plaintiff,

Inhabitant of

versus

Defendant,

Inhabitant of

Suit.

Whereas

plaintiff, has made an application under section 81, Act VIII of 1859,

to call upon the defendant to furnish sufficient security to fulfil any decree that may be passed against him in the suit, or on his failing to give such security to hold under attachment the property, moveable and immoveable, belonging to the defendant, and specified in the application, until the further order of the court, and has given a full statement of property belonging to defendant; and whereas on examining the applicant and making other necessary enquiries the court has reasonable grounds to believe that the defendant, with intent to obstruct and delay the execution of decree, is about to dispose of or remove his property, and it being considered necessary to demand security from the defendant in the sum of Rupees
the schedule of the aforesaid property is hereby delivered to you, with directions to serve the said order upon the defendant, and to call upon him to furnish security in the above sum within days after such service to produce and place at the disposal of the court when required the said property, or to appear and show cause why he should not give such security. You are also required to warn the defendant that if he fail to furnish the required security within the time fixed by the court, or show cause why he should not do so, his aforesaid property shall, after expiration of the limited period, be held in attachment by the court.

No. D (2.)

Warrant to Nazir under Section 83 *of Act VIII of* 1859.

SUIT No. OF 18 A. D.

IN THE COURT OF Zillah.

To

Nazir.

Plaintiff,

Inhabitant of

versus

Defendant,

Inhabitant of

SUIT.

Whereas

plaintiff, has made an application under section 81, Act VIII of 1859, to call upon the defendant to furnish sufficient security to fulfil any decree that may be passed against him in the suit, or on his failing to furnish such security to hold under attachment the property, moveable and immoveable, belonging to the defendant, and specified in the application, until the further order of the court, and has given a full statement of property belonging to the defendant; and whereas on examining the applicant and making other necessary enquiries the court is satisfied that the defendant, with intent to obstruct and delay the execution of decree, is about to dispose of or remove his property, and it is considered necessary to demand from him security in the sum of
and for the present to hold under attachment his property; the schedule of the aforesaid property is hereby delivered to you, with

directions to serve the said order upon the defendant, and to call upon him to furnish security in the above sum within
days after such service to produce and place at the disposal of the court, when required, the said property, or, to appear and show cause why he should not give such security. And you are hereby required to hold under attachment and sequestration the property of the defendant specified in the schedule until the further order of the court, and submit a return thereon.

No. D (3.)

Warrant to Nazir under Section 84 *of Act VIII of* 1859.

SUIT No. of 18 A.D.

IN THE COURT OF Zillah.

To

Nazir.

Plaintiff,

Inhabitant of

versus

Defendant,

Inhabitant of

SUIT.

Whereas

plaintiff, has made an application under section 81, Act VIII of 1859, to call upon the defendant to furnish sufficient security to fulfil any decree that may be passed against him in the suit, or on his failing to furnish such security to hold under attachment the property, moveable and immoveable, belonging to the defendant and specified in the application until the further order of the court, and has given a full statement of property belonging to the defendant; and whereas on examining the applicant and making other necessary enquiries the court is satisfied that the defendant, with intent to obstruct and delay the execution of the decree, is about to dispose of or remove his property; and it being considered necessary to demand from him security in the sum of
and although a warrant was issued to you commanding you to inform the defendant to furnish security or to appear and show cause to the contrary within days, yet he has failed to furnish the required security or show cause within the time fixed by the court; and it being therefore necessary to attach the property of the defendant until the further order of the court, the schedule of the property of the defendant filed by plaintiff is made over to you, and you are hereby directed to hold under attachment the property
specified in the said schedule until the further order of the court, and submit your return thereon.

No. E.

Certificate of Refund of Stamp Duty of the Petition of Plaint noted below under Section 98 *of Act VIII of* 1859.

1	2	3	4	5	6	7
Number of suit or petition and names of plaintiff and defendant.	Value of stamp paper.	Amount of claim.	Names of parties to whom stamp duty is to be refunded.	Amount to be refunded.	Signature of the stamp vendor.	Clause, section, and regulation under which the said amount is refunded.

CERTIFIED that
or his agent
by his order
under order of the court of
dated is entitled to receive
the aforesaid amount
from the Collector.

No. F (1.)

Notice under Section 107 *of Act VIII of* 1859.

SUIT No. OF 18. A.D.

IN THE COURT OF Zillah

Notice to to produce document.

Inhabitant of Pergunnah } Plaintiff,

versus

Inhabitant of Pergunnah } Defendant.

SUIT.

Whereas
is desirous that
which he believes to be in your possession or power, should be produced in this suit, you are hereby directed by this notice, issued agreeably to section 107 of Act VIII of 1859, to produce, on the
18 A.D., corresponding with 12 B. S., the day
the of this suit has been fixed, at the hour of
in the forenoon, in this court, the aforesaid
documents, or send them by your own agent.

No. F (2.)

Notice to Defendant under Section 113 *of Act VIII of* 1859.

SUIT No. OF 18 A.D.

IN THE COURT OF Zillah

Inhabitant of Pergunnah } Plaintiff,

versus

Inhabitant of Pergunnah } Defendant.

SUIT.

Whereas in this case this day was before fixed for and summons was duly served on you, and the plaintiff has appeared in this court, and you were not to be found, but from the return, &c., of the Nazir it has been proved to the satisfaction of the court that the said summons was served on you, but not in sufficient time to enable you to appear and answer on the day fixed in the said summons, consequently the hearing of the suit is adjourned this day, and day of 18 A.D, corresponding with 12 B.S., is now fixed for the hearing of the same. Notice is hereby given to you, agreeably to section 113 of Act VIII of 1859, that you do appear before this court in the forenoon of the day aforesaid, and act according to the exigency thereof.

No. F (3.)

Notice under Section 163 *of Act VIII of* 1859.

SUIT No. OF 18 A.D.

IN THE COURT OF

Zillah

Notice to

Plaintiff,

versus

Defendant.

SUIT.

Whereas having made an application to this court for an order requiring your attendance for examination as a witness, it has been held fit, before passing order for issue of summons on you, to cause notice to be given to you to show cause why you should not attend and give evidence; notice is hereby given to you agreeably to section 163 of Act VIII of 1859, requiring you to show cause on the day of 18 A.D., corresponding with 12 B.S., why you should not attend and give evidence in this case; in default whereof the court will on a subsequent day issue order requiring you to attend and give evidence.

No. F-4 (1.)

Notice to Judgment-debtor under Section 216, *Act VIII of* 1859.

SUIT No. of 18 A.D.

IN THE COURT OF Zillah,

Decreeholder,

versus

Debtor.

Whereas the decreeholder on the 18 A D. presented an application to this court for execution of decree of the court of dated 18 A D., praying for mentioned in the said decree; and whereas on enquiry it appeared that an interval of more than one year has elapsed between the date of the decree and the application for its execution, it being therefore necessary, agreeably to section 216 of Act VIII of 1859, before issuing warrant for execution of decree, to give you notice; you are accordingly required to show cause before this court within days why the said decree should not be executed against you. If you fail to show sufficient cause, the said decree will be enforced against you after the expiry of the aforesaid period.

No. F-4 (2.)

Notice to the Heir or Representative of the Judgment-debtor under Section 216, *Act VIII of* 1859.

SUIT No. OF 18 A.D.

IN THE COURT OF Zillah.

Decreeholder,

versus

Debtor

Whereas the decreeholder on the 18 A.D. presented an application to this court for the execution of a decree of the court of dated 18 A.D., praying for mentioned in the said decree; and whereas on enquiry it appeared that the said decreeholder has applied for the enforcement of the decree against you, naming you as the heir or representative of the judgment-debtor, and it being necessary, agreeably to section 216 of Act VIII of 1859, before issuing a warrant for the execution of the decree, to give you notice; you are accordingly required to show cause before this court within days why the said decree should not be executed against you; in default whereof the said decree will be enforced against you after the expiry of the aforesaid period.

No. F-5 (1.)

Notice to Decreeholder under Section 274, *Act VIII of* 1859.

SUIT No. OF 18 A.D.

IN THE COURT OF Zillah.

Decreeholder,

versus

Judgment-debtor.

Whereas the judgment-debtor, arrested under a warrant issued at your instance, and produced before the court, has applied for his discharge on the ground that he is willing to place whatever property he possesses at the disposal of the court, notice is therefore issued under section 274, Act VIII of 1859, requiring you to show cause why you should not proceed against any property that the debtor is possessed of, and why he should not be discharged.

LEGAL SECRETARIAT LIBRARY.

No. F-5 (2).

Notice to Decreeholder under Section 274, *Act VIII of* 1859.

SUIT No. OF 18 A.D.

IN THE COURT OF Zillah.

Decreeholder,

versus

Judgment-debtor.

Whereas the judgment-debtor, arrested under a warrant issued at your instance, and produced before the court, has applied for his discharge on the ground that he has no present means of paying the debt, either wholly or in part, you are hereby required, under section 274, Act VIII of 1859, to show cause why the judgment-debtor should not be discharged.

No. F-6.

Notice to the Opposite Party under Section 305, *Act VIII of* 1859.

IN THE COURT OF Zillah.

Petitioner,

versus

Opposite Party.

Whereas petitioner, inhabitant of , on the day of 18 A.D., applied to this court for permission to institute a suit against you in *formâ pauperis* under Chapter 5 of Act VIII of 1859, and whereas upon examination and enquiry the court sees no reason to refuse the application, and whereas the day of 18 A.D. has been fixed for receiving such evidence as the petitioner may

adduce in proof of his pauperism, and for hearing any evidence which you may bring forward to the contrary; notice is hereby given to you, agreeably to section 305 of Act VIII of 1859, to offer any evidence you may choose to disprove the pauperism of the petitioner, by appearing either in person or by a vakeel in this court on the said day of 18 A.D., in the forenoon.

No. G.

Deposition.

IN THE COURT OF Zillah.

Present:

SUIT No.

Claim.

Date 18 A.D.

Witness No.
on behalf of
having appeared and taken oath, deposes that my name is
son of
inhabitant of
aged
profession

No. H-1

Summons on a Witness under Section 152, *Act VIII of* 1859.

IN THE SMALL CAUSE COURT OF

SUIT No.

SUMMONS.

inhabitant of Chowkee Plaintiff,

versus

inhabitant of Chowkee Defendant,

To Witness,

inhabitant of Chowkee

Whereas
has cited you as a witness on his behalf, you are hereby required, under section 152 of Act VIII of 1859, to attend this court at 10 o'clock, A.M., on the day of 18 A.D., corresponding with 12 B.S., and to give evidence in the above suit, and (or) produce the documents noted below, and continue to attend the court from day to day until you may have leave to depart. Should you fail to attend you will be dealt with according to law. The sum of , being the amount of your travelling allowance and diet money, it is sent herewith.

The 18 *A.D.*

No. H-2.

Summons to produce Documents under Section 153, *Act VIII of* 1859.

IN THE SMALL CAUSE COURT OF

SUIT NO.

SUMMONS

inhabitant of Chowkee Plaintiff.

versus

inhabitant of Chowkee Defendant.

To

inhabitant of Chowkee

Whereas

has stated that the following documents, viz.

are in your possession, and desires their production through you, you are hereby required, under section 153, Act VIII of 1859, to produce, or cause the said documents to be produced, in this court at 10 o'clock, A.M, on the day of 18 A.D, corresponding with 12 B. S, and continue to attend the court from day to day until discharged; in default whereof you will be dealt with according to law.

The sum of , being the amount of your travelling and diet allowance, it is herewith sent

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No. I-2.

Warrant of Attachment under Section 159, *Act VIII of* 1859.

SUIT NO. OF 18 A.D.

IN THE SMALL CAUSE COURT OF Zillah.

To Nazir.

inhabitant of Plaintiff,

versus

inhabitant of Defendant.

SUIT.

Whereas the witness

cited by

has not been arrested, although a warrant was duly issued, you are hereby required to hold under attachment moveable property belonging to the witness to the value of and to submit a return, together with an inventory thereof, within days.

No. J-1.

Warrant of Arrest of Witness under Section 168, *Act VIII of* 1859.

SUIT NO. of 18 A.D.

IN THE COURT OF Zillah.

To Nazir.

inhabitant of Plaintiff,

versus

inhabitant of Defendant.

Whereas it appears that the witnesses noted below, cited by have not appeared on the day appointed, notwithstanding the due

service of summons upon them, you are hereby ordered to apprehend and bring the said witnesses before the court within
days. In this fail not.

No. J-2.

Warrant of Attachment under Section 168, *Act VIII of* 1859.

SUIT No. OF 18 A.D.

IN THE SMALL CAUSE COURT OF

To

Nazir of the Civil Court.

inhabitant of Plaintiff,

versus

inhabitant of Defendant.

Whereas the witness
cited by
has not, after the expiry of the period limited in the proclamation issued for his attendance, appeared in court, you are hereby directed to hold under attachment moveable property belonging to the said witness to the value of
and to submit a return, accompanied with an inventory thereof, within
days.

No. K-2.

Decree.

SUIT No. of 18 A.D.

IN THE COURT OF Zillah.

Present:

Date of decision 18 A.D., corresponding with 12 B.S., day

inhabitant of Pergunnah } Plaintiff,

versus

inhabitant of Pergunnah } Defendant.

Claim.

Final order.

No. N.

Proclamation of Sale under Section 249, *Act VIII of* 1859.

COURT OF EXECUTION OF DECREE.

No. OF EXECUTION OF DECREE.

versus Decreeholder

Judgment-debtor.

The right, title, and interest in the following property will be sold by public auction on the 18 A.D. in satisfaction of decree.

The public are hereby informed that on the application of accompanied with a schedule of property filed on the 18 A.D., praying for the sale of the same in satisfaction of his decree, a proclamation of sale is hereby issued to the following effect, that a sale of the right, title, and interest of in the property specified below will commence at noon on of at Parties desirous of purchasing the same may appear at the said place and time in person or by mukhtar, and bid for the same.

CONDITIONS OF SALE.

I.—That the sale shall extend only to the right, title, and interest of the judgment-debtor in the property specified above, and shall not affect the right and interest of others therein.

II.—That on the completion of the sale of immoveable property the purchaser shall be required to deposit immediately twenty-five per centum on the amount of the purchase-money under section 253 of Act VIII of 1859, and the full amount of the bid within fifteen days from the date of sale, and obtain possession of the property sold.

III.—That should the purchaser, after making the required deposit, fail to make good the full amount of purchase-money within fifteen days from the time of sale, the deposit, after defraying the necessary expenses of sale, will be forfeited to Government, under section 254 of the said law, and the property re-sold. The defaulting purchaser will make good the amount in which the proceeds of the second sale may fall short of the first; the difference to be carried to the credit of the judgment-debtor, and the decree-holder to be paid the amount of his decree.

IV.—That if the purchaser shall not, immediately on the completion of the sale, make the required deposit, the property will forthwith be put up again and sold. The proceeds of sale shall be recovered from the purchaser at the second sale, and the amount of deficit at the second sale shall be levied from the first purchaser, and being credited to the judgment-debtor, shall be paid to the decree-holder to the extent of his decree.

V.—And whatever profits may result in the two ways aforesaid in a second sale, the same shall, on reference to the third rule, be, under peculiar circumstances, carried to the credit of the judgment-debtor, and the decree-holder shall be paid the amount due under the decree.

VI.—In all cases of sale of moveable property the purchaser shall pay the full amount of purchase-money immediately after sale, under section 251, or as soon after as the officer holding the sale shall direct; and in default of such payment the property will forthwith be again put up and sold, and whatever loss may be sustained in the second sale, the same shall be made good by the first purchaser and carried to the credit of the judgment-debtor, and the decree-holder paid the amount due under the decree.

Be it also known that no party or parties has or have as yet preferred any claim or claims to the aforesaid property.

The day of
Month of year

SCHEDULE OF PROPERTY.

No. P.

Warrant of Attachment and Sale of Judgment-debtor's Property in execution of Decree under Section 250, *Act VIII of* 1859.

CASE No. OF 18 A.D.

IN THE COURT OF Zillah.

To

inhabitant of Pergunnah } Decree-holder,

versus

inhabitant of Pergunnah } Debtor.

SUIT.

Sale for recovery of the amount with costs mentioned in the decree under date 18 A.D.

Rs.

Whereas it is necessary for the realization of the aforesaid warrant due to the decreeholder, under the provisions of section 250, Act VIII of 1859, to sequestrate and sell the property of the judgment-debtor, the inventory filed by the decreeholder of the debtor's property is herewith sent to you, and you are hereby ordered and directed to attach the property aforesaid in the usual manner, and publish a proclamation for the sale of the same, and hold the sale at a conspicuous place, according to law, on the day appointed in the proclamation, and transmit the sale proceeds, together with the papers connected with sale, within days to this court

No. P.

Auction Certificate under Section 259, *Act VIII of* 1859.

IN THE COURT OF Zillah.

Whereas in compliance with the application presented by inhabitant of in pergunnah decreeholder, praying for the sale of the property of the judgment-debtor, in execution of decree No. under date the a proclamation of sale was duly published agreeably to the orders of this court, dated and the sale having been publicly held on the inhabitant of has purchased the right, title, and interest of the judgment-debtor in the property specified therein for the sum of Rs. and deposited the whole amount of consideration money. This certificate is hereby granted to to the effect that he has purchased the right, title, and interest of the defendant in the property sold, and this certificate shall be taken and deemed to be a valid transfer of such right, title, and interest.

Notice on Application for a New Trial.

IN THE SMALL CAUSE COURT OF

Between Plaintiff,

and

Defendant.

BE it remembered that an application has been made that the judgment in this case and all subsequent proceedings thereon be set aside, and a new trial had between the parties, on the deposit by the defendant of the amount of debt and costs at issue; and the defendant having deposited in court the sum of Rupees as directed, you are required to appear on the day of to proceed thereon; *and take notice* that in the event of your absence the Judge will proceed with the case and make such order as to him may seem just. Given under the seal of the court this day of 18

To

The plaintiff above named. *Judge.*

Order for a New Trial.

IN THE COURT OF SMALL CAUSES.

Between { Plaintiff and Defendant.

IT is ordered that the judgment in this case and all subsequent proceedings thereon be set aside, and a new trial had between the parties on

Given under the seal of the court this day of by the court.

Judge.

Form of Commission.

IN THE COURT OF, &c.

Between { Plaintiff and Defendant.

To the Judges of the Calcutta Court of Small Causes.

WHEREAS by an order dated in the above cause, it has been directed that the evidence of and residing at be taken by your court under the provisions of Act VIII of 1859, you (or any or either of you) are hereby requested to take the examination, and depositions of the said witnesses upon oath or affirmation, as provided in section 176 of the

above Act, *upon the interrogatories hereunto annexed** (or "on the points indicated in the annexed extract from the court's proceedings," as the case may be). The examination to be held in the presence of the parties or their agents (if in attendance), who shall be at liberty to question the witnesses on the points specified. And to return this warrant of commission, *together with the interrogatories hereunto annexed*, and the examination of the said witnesses thereon, to this court on or before the day of next. Given under my hand and the seal of the court this day of 18

Seal. (Signed)

Warrant to Arrest for Contempt.

In the Court of Small Causes.

To

One of the Bailiffs of the Court of Small Causes of and to all other Bailiffs of the said court, and to all Constables and Peace Officers in the

These are to command you to apprehend and take the body of the said having been charged before me Esquire, Judge of the above Court of Small Causes, on the day of on the of for that and bring him, the said before me at my court house in to answer the said charge, and to be further dealt with according to law. Given under my hand and seal this day of

Judge of the said Court.

Form of Receipt.

In the Court of Small Causes of

Regr. No.

Plaintiff
Defendant
Received from
Plaint filed
This day of 18
The above cause will be tried on the day of 18 .
Bailiff.

Poddar. *Nazir.*

N.B.—No money will be paid out of court except on production of this receipt, or by order of the Judge.

Bring this receipt when you come to the court for any purpose connected with this cause.

* The words in italics to be omitted when interrogatories are not sent.

Further General Instructions for Small Cause Courts.

Extract paras. 16 to 19 from the Proceedings of the Court of Sudder Dewany Adawlut, dated 1st July 1861.

1. The Court avail themselves of this opportunity to lay down a few instructions for the guidance of the Judges of Small Cause Courts, and to inform the Judges of districts of the extent of their authority over the former officers.

Indents for forms to be made through Superintendent of Stationery. Summons and Register Books to be kept in one language, i.e. (if possible) English. Holidays, &c.

2. Copies of the "Rules of Practice" for the Courts of Small Causes, as laid down by the Court under section 20 of Act XLII of 1860, have already been despatched* to each Judge of those courts, as well as most of the forms to be used, and the remainder of the forms will follow within a few days. The forms are to be adhered to; and, when more are required, an indent should be made in the usual way, through the Superintendent of Stationery, on the Alipore Jail Press. The forms are both in English and the vernacular, so that one or the other may be used, according to circumstances. The Summons and Register Books, alluded to in the rules as A and B, need only be kept in one language, which should be English, if possible. The Bengali copies have, however, been sent, in case any Judge that may be hereafter appointed to any of the courts should not be acquainted with the English language. The Judges will receive the Bengali or Urdoo Gazettes; and their courts will be closed on the days when other civil courts are closed. The Court is in communication with Government on the subject of the custody of money deposited in the Small Cause Courts,† the taking of security from officers in charge of it, &c., and instructions on the subject will be issued hereafter.

Difference of procedure and jurisdiction between Small Cause Courts and other courts. Use of Summons and Register Books. Stamp for plaint. No institution fee. Jurisdiction.

3. Care should be taken to preserve accurately the difference in procedure and jurisdiction between the Small Cause Courts and other civil courts. In a Small Cause Court, an abstract of the evidence is only necessary, and the only separate documents relating to a suit should, in most cases, be the plaint, the returned summons, and any other processes that it may be necessary to issue. The Summons and Register Books will, in these courts, answer to the record in other courts, the use of the plaint being merely for the sake of the stamp, there being in the mofussil Small Cause Courts

* *Vide* rules in preceding pages.

† The rules now in force are those promulgated by the High Court and the Financial Department for the guidance of all courts and all treasury officers. See at end of this volume.

no institution fee, as there is in Calcutta. Entries having once been made in these books, the plaint will, in all probability, be no longer required. The two sides of half a sheet of foolscap paper in the Summons Book should contain the claim of a plaintiff; the reply of the defendant, such brief substance of evidence, oral or documentary, produced on either side, as the Judge may think it necessary to write down, and the Judge's decision and judgment. Thus, a Summons Book containing 100 sheets of paper will contain the record of 200 suits; and the same with regard to the Register Book in another form. With regard to jurisdiction, the attention of Small Cause Court Judges is directed to section 4* of Act XLII of 1860, and the Judges of districts should remind the Sudder Ameens and Moonsifs subordinate to them that, if the defendant does not reside or personally work for gain within the local limits of the Small Cause Court, the suit cannot be heard by a Small Cause Court Judge, and must be instituted in one of the old courts.

Small Cause Courts to communicate with Sudder Court direct. Copies of statements to be sent to Zillah Judge.

4. As section 5† of Act XLII of 1860 gives no power to the Sudder Court to delegate the authority therein granted, the Judges of the Small Cause Courts must communicate direct with the Sudder Court whenever they submit their statements; but copies‡ of the latter should be sent to the Judge of district, as the information conveyed in them may be generally useful. It is be hoped that scarcely any correspondence will be necessary; but whenever it is so, the Judges of the Small Cause Courts will, in that capacity, correspond direct with the Sudder Court. Those officers who are Principal Sudder Ameens will, however, as such, be subordinate to the District Judge, and all communications that in any way affect their position as Principal Sudder Ameen will be made through that officer.

Jurisdiction of Small Cause Courts specially conferred on certain ordinary Courts under section 29, Act VI of 1871.

All District Judges and Judicial Commissioners are hereby directed to inform the Court, when for any special cause they consider it advisable, that a particular Moonsif should

* See section 8, Act XI of 1865.

† See section 4, Act XI of 1865.

‡ Certain *annual* returns of work, however (Nos. 6, 7, 8, and 10 *Judicial*), are now required to be made by Small Cause Courts to District Judges. See High Court's C. O. No. 5, dated 25th February 1871.

be invested, under section 29 of the Bengal Civil Courts' Act (VI of 1871), with the jurisdiction of a Court of Small Causes up to the amount of *fifty* rupees; stating both the local circumstances which appear to call for the measure, and the Moonsif's fitness to exercise such powers. Among the circumstances to be stated are the following: whether there is more than one Moonsif at the station indicated, and if so, what the distribution of business between the Moonsifs is, and within what limits it is intended that the proposed jurisdiction should be exercised.—(*C. O.*, 1871, *No.* 24, *August* 12*th.*)

Periodical returns from these Courts.

The High Court directs that cases of the Small Cause Court class, where the value does not exceed Rs 50, decided by Moonsifs in the exercise of the powers of a Judge of Small Cause Court, vested in them by Government under section 9, Act VI of 1871, be shown separately in the quarterly statements A and B, prescribed by circular order No. 31, dated the 4th November 1871. This will not necessitate the introduction of a fresh column, as one already exists with the superscription "Small Cause Court Class;" but it will require a distinction to be made, such as is indicated on the margin* *in* that column, between the cases decided by Moonsifs as Small Cause Court Judges and those decided in their capacity of Moonsifs.

* Moonsif of { Not exceeding Rs. 50. / Exceeding Rs. 50.

All the Zillah Judges and Judicial Commissioners, in whose districts Moonsifs have been vested with the powers described in section 29 of the Bengal Civil Courts' Act, 1871, are also enjoined to require from such Moonsifs *monthly* returns of the work performed by them in the exercise of their special jurisdiction in the forms Nos. 1 and 2 prescribed by circular order No. 12, dated 19th December 1862, to be submitted, not to the High Court, as the returns of Small Cause Court Judges are, but to the Judge of the district. Samples of the forms are sent herewith.

All the Zillah Judges and Judicial Commissioners in question are at the same time instructed to exercise a

strict supervision over the Moonsifs, in respect of these cases, by frequently sending for their books and watching how the evidence is taken, and in such other respects as may be possible.

It is also declared that pleaders of the junior grade may appear in such cases before the Moonsifs' courts.—(*C. O.*, 1871, *No.* 14, *May* 12*th.*) Also see C. M. 1875, No. 3, Feb. 1st, at page 265, post.

Summons Book and Register are to be employed by these Courts.

Every Subordinate Judge and Moonsif vested under section 29, Act VI of 1871, with the jurisdiction of a Judge of a Court of Small Causes, whatever the pecuniary limits assigned, shall use the Summons Book and Register in use in Small Cause Courts for purposes of record in connection with cases tried under such powers.—(*C. O.*, 1875, *No.* 7, *June* 12*th.*)

No. 1.

Statement of Cases on the file of the Court of Small Causes of during 18 .

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Description of Cases.	Pending at the end of	Instituted during.	Total.	For Plaintiff. On their merits.	For Plaintiff. Ex-parte.	For Plaintiff. Confession.	For Defendant. On their merits.	Total of cases decided on trial.	Otherwise disposed of.	Total of every description disposed of	Pending at the end of	How many of these last were pending above six weeks, cause of delay, and date fixed for their hearing.	Remarks.
1. Money claims, whether on bond or other contract													
2. Rent of houses ..													
3. Claims for personal property													
4. Claims for damages													
Total .													

The 18 .

Judge of the Small Cause Court.

No. 2.

Statement of Applications for execution of decrees on the file of the Court of Small Causes at during 18 . .

1	2	3	4	5	6	7	8	9	10
Denomination of court.	Pending at the end of	Applications filed during	Total.	Disposed of	Struck off.	Total disposed of.	Pending at the end of	Of these last the number pending for six months and upwards	Cause of delay.

COPIES, &c., how to be obtained from Small Cause Courts— *See under* "RECORDS,—*Copies, authenticated and unauthenticated.*

Disposal of Records.

The High Court is pleased to direct the destruction, once a year, of the records of all cases disposed of in the Courts of Small Causes in which execution has been completely obtained, or in which three years have passed since the last attempt to execute was made, and when any further execution would be barred by the law of limitation. The Summons Book and Register will afford all information that can afterwards be requird.—(*C. O.*, 1866, *No.* 40, *October 2nd.*)

The above rule applies also to records of such cases as are decided under section 29, Act VI of 1871, by those Subordinate Judges and Moonsifs who, in addition to their ordinary powers, are vested under the above section with the jurisdiction of a Judge of Small Causes.—(*C. O.*, 1875, *No.* 7, *June 12th.*)

Circuits of a Judge of several Small Cause Courts.

Previous confirmation by Government of arrangements made under section 14, Act XI of 1865, is not necessary in order to give them legal validity. The High Court accordingly direct, with the approval of His Honor the Lieutenant-Governor, that arrangements as to the sittings of a Judge of two or more Small Cause Courts be merely reported to the local Government through the High Court, the notification as to the times of circuit and dates of sitting appearing simultaneously in the *Calcutta Gazette* under the signature of the Small Cause Court Judges themselves, "subject to the orders of Government."—(*C. O.*, 1872, *No.* 21, *June 26th.*)

Circular Orders.

Circular orders which are addressed to "all Civil Courts" are intended to apply also to Courts of Small Causes.—(*C. M.*, 1873, *No.* 11, *June 18th.*)

Powers of Clerk of Small Cause Court.

The High Court having been informed [1864] that a difference of opinion exists among Judges of Small Cause Courts in the mofussil as to the competency of the head

clerk of such a court to sign a requisition to the Judge of another court to cause a process to be served upon a party residing within the jurisdiction of that other court, are pleased to issue the following instruction on the subject:—

As the clerk of a Court of Small Causes is required by section 5, Act XII of 1861, "subject to the orders of the court," to issue all summonses, warrants, orders, and writs of execution, the High Court are of opinion that the head clerk of a mofussil Small Cause Court is competent to sign requisitions to other courts with a view to the service of process, provided that such requisitions shall issue *in the name* of the presiding Judge, and be signed as *by order* of that functionary.—(*C. O.*, 1864, *No.* 27, *September* 6*th.*)

[Enquiry in Circular Memorandum, 1872, No. 5, March 16th, addressed to all mofussil Small Cause Courts, as to whether they have a "Clerk of the court" appointed under section 44, Act XI of 1865; and if not, whether the head clerk otherwise appointed exercises any of the powers specified in section 45 of that Act.]

Nazirs.—See under PROCESS SERVICE.

Peons.—See under PROCESS SERVICE.

Control over Contingent Bills (*Small Cause Courts.*)

All bills for travelling allowance, stationery charges, and other contingent expenditure incurred by the Courts of Small Causes in a district shall be submitted to the Judge of that district for audit, passing, and countersigning.

At the desire of the Lieutenant-Governor, the Court will retain, for the present, the control of the general expenditure on account of contingent charges of Small Cause Courts. It is accordingly directed that Small Cause Court Judges apply, *before the beginning of each official year*, for general sanction to the scale of contingent expenditure estimated for, with a view to the preparation of the budget for the year. The scale in question must be submitted for the approval of the Court in time for check and control being exercised upon it before it is included in the budget.

A copy of the scale in each case, after it has received the sanction of the Financial Department in the budget,

will be forwarded by the Accountant-General for the information and guidance of the District Judge within whose district the Small Cause Courts to which it relates are situated.—(*C. O.*, 1873, *No.* 18, *August 4th.*)

All Small Cause Court Judges, when submitting their annual scale of contingent charges to the High Court for sanction, will furnish full details of the items composing the heads Office Expenses and Miscellaneous.

In cases where the officer submitting the estimate is a Subordinate Judge vested with Small Cause Court powers, charges on account of punkah-pullers should be budgeted for by the Subordinate Judge.—(*C. O.*, 1874, *No.* 23, *October 2nd.*)

RECORDS.

PRECAUTIONS AGAINST TAMPERING OR ALLEGED TAMPERING WITH RECORDS.

C. O., 1836, *No.* 178, *July 29th.*

Several instances having lately [1836] occurred of objections being taken in the Sudder Court to original documents filed as exhibits in the lower courts, on the ground of their having been altered since the date of their execution, which, at the time they were filed, as well as on the decision of the suit by those courts, passed without question, and without any doubts being expressed as to their authenticity, and the Court seeing reason to believe that such documents have not unfrequently been altered by interested persons in order to throw suspicion upon them, and to suit their own views, either after the decision of the case by the lower court, or subsequently to the receipt of the record in this Court, it is requested that, with a view to check, as far as may be practicable, this very serious evil, the District Judge will cause the record-keeper of his court, or any other respectable and trustworthy officer on his establishment, to certify in the presence of the *vakeels* of the parties, or of the parties themselves, the actual state, at the time of filing, of all original documents exhibited as proofs in his court, desiring him carefully to note any interpolations, erasures, or other alterations at that date apparent on the face of them; and that the District Judge will observe a similar precaution at the time of despatching the record of causes appealed to the court, forwarding the original documents filed by the respective parties in such cases, together with the original depositions of the witnesses for the prosecution and defence in two parcels, in a separate cover under seal, each parcel being endorsed as in the margin, and accompanied by a list of the contents and the certificates above required.

Original documents filed as exhibits.

Certificate of their condition when filed.

Original papers to be sent up in separate parcels, sealed and listed.

"Exhibits, &c., filed by the plaintiff or appellant in the case of
versus
" Exhibits &c., filed by the defendant or respondent in the case of
versus

3. By the introduction of the same rules into the courts subordinate to the District Judge, to whom he is requested to issue the necessary instructions, the Court would hope that he evils above complained of may be in a great degree

remedied if not entirely removed.—(*C. O.*, 1836, *No.* 178, *July 29th.*)

Circular Order No. 168, dated 8th October 1841, (L. P. and W. P.)
Attention called to foregoing rule.

The Sudder Court having observed a very general and increasing disregard of the rule contained in the [above] circular order No. 178, dated the 29th July 1836, which requires that, in despatching the record of causes appealed to the court, the original depositions of witnesses, and the exhibits filed by the parties respectively, be forwarded in a separate cover under seal, each packet being properly endorsed and accompanied by a list of its contents and by a certificate of the actual state of the exhibits at the time of filing, deem it necessary to call the particular attention of the Judges to the circular instructions referred to, and to intimate that any deviation which may in future be observed from this important rule, which by the circular is also made applicable to the subordinate courts, will be visited with serious notice by the Court.—(*C. O.*, 1841, *No.* 168, *October 8th.*)

Transmission of records by Moonsifs and Subordinate Judges to the District Judges.

In modification of the rules contained in paragraphs 9 and 10 of circular order No. 49, dated 20th September 1839, for the monthly transmission of records from the courts of Principal Sudder Ameens (now Subordinate Judges) and Moonsifs for deposit in the District Judge's office, the Court is pleased to direct that, with the exception of contested cases, the records in question be sent in quarterly, by such dates as the District Judge may prescribe, instead of once a month. The records of contested cases will be forwarded monthly as heretofore.—(*C. O.*, 1873, *No.* 16, *July 30th.*)

List to accompany decided cases sent in by outlying Courts to the District Judge.

C. O., 1874, *No.* 7, *March* 4*th.*

The Court is pleased to prescribe, for adoption by the subordinate civil courts, the accompanying form of *Fehrist* or list of cases to accompany the records of all decided cases sent in by Subordinate Judges and Moonsifs for deposit in the District Judge's office.

2. These statements, on printed forms, are to be always uniform in size and shape in order to be bound up so as to constitute a register of decided cases useful for the purpose of tracing and identifying records.

No. from list.	No. from Court's register.	Description of case.	Date of decision.	Numbered paper or papers contained in the nathi.	Remarks.
1	10 of 1873 ...	Regular Rent Suit . .	4th Oct. 1873.	121	
2	67 of 1872 ...	Miscellaneous	5th Jan. 1873.	97	
3, &c.	19 of 1872 ...	Regular Small Cause Court ...	4th Feb. 1873.	54	

FLY-LEAF FOR RECORD OF PENDING SUITS.

C. O. No. 186, *dated* 24*th October* 1861.

It has been represented to the Sudder Court that owing to the fly-leaf that used to be attached to the record of pending suits having been discontinued, some inconvenience has, in one or two instances, been experienced, when it has been alleged that documents were missing from a record, there being no means of knowing whether they ever were actually placed with it or not, therefore forwards, for general adoption in the civil courts of each district, the accompanying form of fly-leaf (which is to be used either in English or Vernacular according to circumstances), together with an extract* from the Judge of Nuddea, conveying suggestions as to the use that should be made of it.

* Para. 4.

Zillah
Court of the Moonsif of
List of the papers of case No. of 186 .
Execution of decree file
Ram Chunder Doss, plaintiff, *Ahmud Ali and others*, defendants,
or petitioner — or opposite party.

No.	Nature of paper.	Date of filing.	Remarks.
1	Application to execute	21st March 1861 ...	
2	Decree of this court, dated 29th December 1861.	.....	Returned 18th July 1861.
3	Petition of Ahmed Ali, objecting	1st April	.....
4	Receipt in full, dated 5th January 1861 ...	.....	Penalty of Rs. 23 paid herewith.

Extract paragraph 4 from a letter from the Judge of Nuddea, No. 277, dated 24th September 1861.

4. I would suggest the adoption of a printed or lithographed form with which every court should be provided in amply sufficient numbers; an example of such a form is annexed. It should be the duty of the serishtadar on the very institution of a suit to cause the heading of such a form to be filled up and to place it at once with the plaint, and lay it before the presiding Judge for his signature, and the officer in charge of the suits should enter in this index leaf each paper as it is filed, or ordered to be filed, with the nathi, marking in such paper its corresponding number. When and how to be filled up.

RECORDS IN WHOSE CUSTODY TO BE LEFT WHEN MOONSIF IS ABSENT ON LEAVE, AND HOW TO BE SECURED DURING VACATIONS.

The Court have reason to believe that it is the practice of Moonsifs to deposit their records at the nearest thannahs when they are absent from their stations during the vacations, or at any other time. As this is an objectionable practice, the Court are pleased to direct that, except at the vacations, Moonsifs, who are about to avail themselves of leave of absence, are to leave their records in the custody of their amlah, and that at the vacations, when the amlah are permitted to go to their homes, they will pack up the records in boxes, sealing the boxes in the usual manner, and placing a guard of peons over the cutcherry during their absence.—(*C. O.*, 1846, *No.* 121, *January 9th.*)

TRANSMISSION OF RECORDS TO HIGH COURT.

All records of cases sent up to the High Court may be transmitted by banghy-post instead of by letter-post, *prepayment* of the requisite postage being made in every instance in the manner prescribed by Rule 25 of the Post Office Rules notified at page 170, Part I, of the *Gazette of India* of 12th March 1870.—(*C. O.*, 1870, *No.* 33, *November 23rd.*)

Orders to be returnable on specific dates.

C. O., 1845, *No.* 79, *February 3rd.*

With a view to expedite the transaction of civil business, as far as may be practicable, consistently with a just regard

to the requirements of law, the following rules are promulgated for the guidance of the Civil Judges and their subordinates:—

No order for filing of pleadings, issue of process, &c., to be passed without a period for its fulfilment being specified.

I.—No order for the filing of pleadings or presentation of exhibits for the issue of legal process, whether of notice to the defendant, or proclamation or subpœna for the attendance of witnesses, or for production of papers from the record, shall be passed without the simultaneous assignment of a specific period for its fulfilment; provided, of course, that the order, whatever its object and purport, be susceptible of execution within a given period; and provided that, by existing enactments, no fixed period is allowed for such execution.

Action to be taken when order is not executed within specified time

II.—On the expiry of that period, without execution of the order to which it relates having taken place, it shall be the duty of the *serishtadar* or other ministerial officer to bring the fact to the notice of the presiding authority, and to lay the record of the case before him for such instructions as he may be pleased to issue.

Records not to be indiscriminately sent for. Ordinarily the proper course for bringing papers from records before a court is to file attested copies or extracts.

The High Court directs that all records of cases be retained in the record-rooms of the courts to which they pertain, or of the superior court of the district, and that they be not allowed to pass out of the custody of the officers of such courts, except when called for by superior judicial authority, or required for the purposes of section 138, Act VIII of 1859, by a civil court not at the same station.

2. It is improper and inconvenient that records of the courts of justice should be sent to other public officers or functionaries. If a reference to their contents is required, the proper procedure is ordinarily to obtain copies of the requisite papers.

3. The Court desires to point out to Civil Judges of every grade the necessity for exercising careful discretion in acting upon the provisions of section 138 of the Code of Civil Procedure, Act VIII of 1859, which are found to be often abused.—(*C. O.*, 1875, *No.* 15, *December* 16*th.*)

COPIES, AUTHENTICATED AND UNAUTHENTICATED.

C. O., 1870, *No.* 18, *June 23rd.*

I.—All applications for *information*, or for *unauthenticated copies* of papers or documents, shall be made at a place and to the officer designated by the ZILLAH JUDGE* for that purpose, between the hours of 12 and 2.

[The rules, so far as applicable, were extended also to authenticated copies by circular order, 1875, No. 8, dated June 29th.]

II.—The officer to be so designated shall be either the record-keeper or such other paid ministerial officer of the Judge's court as can be spared. The officer taking the duty on each day shall be noted by the serishtadar in the office diary.

[The duty of examining copies should be, as a rule, entrusted to the head-clerk or serishtadar; but where this is not possible, the Judge of the court should make any other suitable arrangement, except that the copyist must not be allowed to examine for each other.—(*C. O.*, 1875, *No.* 8, *June 29th.*)]

III.—The applications shall be on a printed form A in duplicate, to be obtained from the nazir at the price of 1 pice or ¼ anna per sheet. The applicant is to present it with the duplicate spaces reserved for the date, his name and residence, and the particulars of the information required filled up. The officer receiving such application is to enter in duplicate in the first column the consecutive number, and in the fifth column his signature. If he can furnish the information at once, he will note the same on the upper portion of the form in the column for remarks and make that part over to the applicant, taking the latter's receipt in the column for remarks in the lower portion, which will be retained and recorded in the office. If he cannot furnish the information at once, he will enter in duplicate, in the fourth column of the form, the date by which the information can be furnished. The upper and lower portions of the form, with columns 1, 2, 3, 4, and 5 thus filled up, will then be separated. The

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* The High Court are pleased to authorize Zillah Judges and Judicial Commissioners generally to extend to the SUBORDINATE CIVIL COURTS under their control the provisions of the [above] circular order No. 18, dated 23rd June, or so many of the rules therein contained as may be considered applicable.—C. O., 1870, No. 30, September 19th.

All Judges of COURTS OF SMALL CAUSES, subject to the control of the High Court under section 4, Act XI of 1865, are hereby directed to carry out in their courts the provisions of the [above] circular order No. 18, dated the 23rd June 1870, as far as they may be applicable.—C. O., 1871, No. 22, July 18th.

lower part will be made over to the applicant, with a direction to return with it at the time fixed. The upper portion will be passed on to the amlah, to whose department it pertains, who will enter in the column for remarks the necessary information, and return it to the receiving officer before the time prescribed. On the applicant's re-appearance, this upper portion, bearing the information, will be made over to him, and the lower portion, bearing his dated receipt in the column for remarks, will be taken from him and recorded in the office.

IV.—Applications for copies of any papers or documents shall be in like manner received by the same officer and shall be in the form B, which will be obtained in loose sheets* in the same way and at the same cost as form A. Every such application shall be numbered consecutively as received, and the body or main portion of the form shall be passed on into the office, with a memorandum stating the date and hour by which the copy is to be ready, and a corresponding note shall be invariably made on the counterfoil, which is to be returned to the applicant.

V.—Care will be taken to have the copy ready in each case by the time fixed, before which it will, with the body of form B attached to it, be handed back to the record-keeper or other officer, who, on the original applicant's appearance with the counterfoil, will make over the copy to him, taking his receipt for the same in the last column of the form for remarks, in which the date of such receipt will also be noted. These forms will then be recorded in the office, filed in the order of their admission in a separate series for each month. At the close of each quarter they will be examined by the serishtadar, who will bring to notice any irregularity or unpunctuality that may be apparent in the department. At the end of the year the Judge, after satisfying himself as to the working of the office by an inspection of the forms recorded during the year, may order their sale as waste paper, or direct their destruction.

VI.—The Judge is to license as many copyists, to be selected as far as practicable from the apprentices in his office,—regard of course being had to their efficiency,—as may be required for the purpose of supplying all applicants with copies without inconvenient delay; and no one but a

* N.—The books of these forms, supplied under the superseded circular, should be unbound and opened, and the separate sheets should be made over to the nazir for sale.

licensed copyist is to be employed in the preparation of copies.

[The rates will be as follows: viz. 1 rupee for 800 English words, and 1 rupee for 1,600 vernacular words; or (in other words) 2 annas for every 100 words in English, and 1 anna for every 100 words in the vernacular, *four figures* counting as *one word.* A separate charge of 8 annas will be made for examining the number of 800 and 1,600 words respectively.—(*C. O.*, 1875, *No.* 8, *June 29th.*)]

These rates will regulate both the fees charged to the public and the remuneration paid on account of Government.—(*C. O.*, 1875, *No.* 8, *dated June 29th.*)

On each copy the amount of the fee received is to be noted as follows:—

Number of words
(English or vernacular)
in the copy at
anna per 100 words is ... Rs. 0 0 0
Received payment,
A. B.,
Licensed Copyist.

VII.—Copies of maps and plans cannot be supplied from the Judge's office, but application should be made to the offices where the original maps are deposited. No copy of a copy shall be supplied without express sanction of the Judge.

VIII.—The number of copyists licensed should not be greater than will admit, under ordinary circumstances, of each Vernacular copyist earning at least Rs. 12, and of each English copyist earning at least Rs. 20, per month. Each copyist is to keep a register showing his receipts, which he is to submit once a month to the Judge, who will thus be enabled to regulate the establishment of copyists and to reduce the number, if required, with reference to the provisions of the preceding rule. The Judge may, under pressure of work, depute to his serishtadar the duty of examining these registers; but he is under no circumstance to omit doing so himself at least once a quarter, and a certificate of his inspection of these books is always to be inserted in the Annual Report.

IX.—A fee of 8 annas shall be charged for searching. No fees are to be required or paid for searching or copying papers wanted by public officers for public purposes.

X.—A book is to be kept by the record-keeper, in which all sums received on account of searching are to be entered. These sums are to be handed over daily to the nazir, and by him paid into the treasury to the credit of Law and Justice, under such heading as the Government may direct, once a month, or oftener, if, with regard to the amount received, this should be necessary.

XI.—The record-rooms are not open to the public generally, but public officers of the district (including serishtadars) and pleaders may enter the record-room and examine the record of any case in the presence of the record-keeper or one of his assistants. Pleaders before making such examination should pay the fee prescribed by Rule IX.

XII.—Loose sheets of forms A and B should be indented for on the Superintendent of Government Stationery. Either English or Vernacular forms may be thus indented for, as translations of forms A and B in Bengali and Urdoo have been sent by the Court to the Superintendent.

These rules are only experimental, and the Court will be glad therefore to have a report at the end of the year as to how they have worked, and whether or not the fees and charges fixed require alteration.

[*See* C. O. No. 30, dated the 19th September 1870.]

A.

Form of Application for information.

No. and date.	Name and residence of applicant.	Nature of the information required.	Date on which the information is to be ready.	Signature of officer receiving the application.	REMARKS.

Note.—These forms may be procured from the nazir of the court at 1 pice per single form, or 100 for a rupee.

The person applying for information is to fill up columns 1, (except the No). 2, and 3, and present it to the officer appointed to receive such applications, who, if the information required cannot be immediately supplied, will fill up, tear off, and return the bottom part of the form to the applicant.

B.—COUNTERFOIL.

Name of applicant.

Date of receipt of application.

The time by which the copy required is to be ready.

B.

Form of Application for copies.

Number and date of application.	Name, residence, and description of applicant.	Specification of paper of which the copy is required.	Case or proceeding in which such paper is to be found or was filed.	Name of office or department where the paper in question is to be found.	Time when copy will be ready.	Name of copyist.	Name of officer receiving application on who fills up the three preceding columns.	REMARKS.

Copy required will be furnished by on the at

Signature.

Note.—These forms* may be procured from th nazir of the court at 1 pice per single form, or 100 for a rupee. The person applying for a copy is to fill up columns 1, (except the No.) 2, and 3, and present it to the officer appointed to receive such applications, who will pass it on to the proper officer.

* These forms are also supplied in Bengali and Urdoo.

Copies of Judgment (See 198 Civil Procedure Code) and of other papers on record.

C. M., 1872, *No.* 13, *July 27th.*

From Registrar, to the Judge of

I am directed to acknowledge the receipt of your letter No. 405, dated the 27th May last, wherein you solicit a re-consideration of the provision* of circular order No. 178, dated 13th May 1861, which prohibits any charge being made for copies of decrees or judgments required by parties to a suit.

2. I am to inform you in reply that the Court have no power to declare that copies of judgments shall, as far as the parties to the suit are concerned, be charged for. The law (section 198, Act VIII of 1859,) requires certified copies of decrees and judgments to be furnished to parties on the production of the necessary stamps. When, therefore, such stamps are put in by a party to the suit, a copy of the decree and judgment must be furnished to him without further cost.

3. With regard to your remark as to few, if any, of the old class of office mohurirs in Moonsifs' courts knowing English, the Court observe that, if this is so, you should in future withhold your approval, under section 36 of the Civil Courts' Act, if the Moonsif should propose any establishment on which there was not at least one mohurir who knew English. If, in the meantime, copies of decrees and judgments cannot be made at the chowkeys, they must be sent in to the Judge's office to be made there.

Petitioners to mention the number of documents of which transcripts are required.

There being reason to believe that specifications of additional documents are sometimes inserted in applications for copies of papers after the presentation of the application and the passing of an order for granting copies of the papers originally applied for, the Court, with a view to prevent such a practice, direct that petitioners be in future required to mention in words the number of documents of which transcripts are required, and to insert the date of application immediately after the list of papers.—(*C. C.*, 1843, *No* 8, *April 7th.*)

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* "When a copy of the decrees or judgments is required by the parties to the suit, it must, in accordance with the provisions of section 198 of Act VIII of 1859, be given free of charge, and must be prepared by the office mohurirs. But when any person, who is not a party to the suit, requires a copy of a decree or other document, or when the applicant, though a party in it, requires a copy of any other document than the decree or judgment, the Court see no reason why he should not be charged with the cost of making it."

What persons are entitled to copies.

(*C. O.*, 1875, *No.* 6, *June 2nd.*)

A reference having been made to the High Court as to the course to be observed in dealing with applications for certified copies of documents appertaining to the record of a civil suit, the following rules are laid down for the information and guidance of the courts subordinate to the High Court:—

1. A plaintiff, or a defendant, who has appeared to the suit, is entitled, at any stage of the suit, to obtain copies of the record of the suit, including exhibits which have been put in *and finally accepted* by the Court as evidence.

[*N.B.*—A party who has been ordered to file a written statement is not entitled to inspect or take a copy of a written statement filed by another party until he has first filed his own.]

2. A stranger to the suit may *after decree* obtain, as of course, copies of the plaint, written statements, affidavits, and petitions filed in the suit; and may, for sufficient reason shown to the satisfaction of the Court, obtain copies of any such documents *before decree.*

3. A stranger to the suit may also obtain, as of course, copies of judgments, decrees, or orders at any time after they have been passed or made.

4. A stranger to the suit has no right to obtain copies of exhibits put in evidence, except with the consent of the person by whom they were produced.

Applications for copies of the High Courts' Letters and Resolutions.

The Sudder Court request that whenever applications are made to the several Civil and Criminal Authorities in the Lower Provinces for copies of any letters from, or resolutions passed by, the court, the said authorities will refer the applicants to the court instead of granting the copies asked for.

This rule is not to be considered to apply to the sentences of the Nizamut Adawlut in criminal trials.—(*C. O.*, 1844, *No.* 47, *April* 19*th.*)

Printed Forms. Indents.

The High Court direct that all future applications for printed or lithographed forms required by the Judges of

various grades be made to the Superintendent of Stationery, who has received instructions to supply only such forms as have been approved by the High Court.

The Superintendent of Government Printing has also been instructed to receive no applications, except from the Superintendent of Stationery.

Indents from Subordinate Judges and Moonsifs are to be submitted through their superiors.

Any Judge who desires to propose any form, not in general use, for adoption in the civil courts, will be at liberty to address the Court upon the subject.—(*C. O.*, 1870, *No.* 16, *dated 17th June.*)

The attention of all District Judges is drawn to (the above) circular order No. 16, dated 17th June 1870, directing that applications for forms required by Judges should be made to the Superintendent of Stationery, who has received instructions to supply only such forms as have been approved by the High Court.

The issue of this circular is rendered necessary because, in some districts, it is found that Judges continue to make use of their own forms without the sanction of the Court.—(*C. M.*, 1874, *No.* 13, *May 13th.*)

At the instance of His Honor the Lieutenant-Governor of Bengal, the High Court is pleased to direct all Civil and Criminal Authorities under their control to submit their annual indents to the Superintendent of Stationery for the authorized judicial forms in use in their own and their subordinate courts during the month of April of each year.

Unless judicial indents are unusually large, they can, under ordinary circumstances, the Court are assured, be all complied with within two months' time of their receipt. Emergent indents, however, can be sent in, and will be complied with at any time of the year. The Court, however, expect that the necessity for submitting such indents will only arise under exceptional circumstances, such as could not reasonably have been foreseen at the time of the submission of the annual indent.

Emergent indents should be sent in through the High Court.—(*C. O.*, 1872, *No.* 23, *July 3rd.*)

Copies of High Court Circulars.

As the Court's circular orders are issued in sufficient numbers to supply with a copy not only the Chief Court of

each district, but also all the courts of the district, civil or criminal, officers subordinate to the High Court will no longer indent on the Alipore Jail Press direct for printed copies of circulars.—(*C. O.*, 1871, *No.* 13, *May* 11*th.*)

Stationery Allowance.

At the instance of the Government of Bengal the High Court circulates, for the information and guidance of all District Judges and Judges of Small Cause Courts, an extract from the revised scale of stationery allowances sanctioned by the Financial Department, under date 4th September 1871, for all offices in Bengal.

2. Attention is drawn to the supplement at the end of the tabular statement, in which the allowances sanctioned for Subordinate Judges and Moonsifs are exhibited. In the case of the former the allowance, it will be seen, continues as before, but in that of the latter the allowance has been raised from Rs. 8 to Rs. 12 for each officer.—(*C. O.*, 1872, *No.* 19, *June* 17*th.*)

Extract from the revised scale of Stationery Allowances sanctioned for all Offices in Bengal by letter No. 3302, dated 4th September 1871, from Assistant Secretary, Government of India (Financial Department), to Secretary, Government of Bengal.

PART I.

NAMES OF OFFICERS.	STATIONS.	Average monthly amount of expenditure.	Amount proposed by the Board and sanctioned by the Government of India, as per letter No. 495, dated 31st May 1867, forwarded with Government order No. 3159, dated 20th July 1867.	Amount not included in the original statement, or which require formal sanction.	Increase per month.
		Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
Zillah Judge of	Backergunge ...	30 13 4	20 0 0		
Ditto (Additional) ...	Ditto	1 11 0	0 0 0		
Ditto	Beerbhoom ...	16 6 0	15 0 0		
Ditto	Bhaugulpore ...	27 7 9	20 0 0		
Ditto (Additional) ...	Ditto	1 4 0	2 0 0		
Ditto	Burdwan	31 12 10	30 0 0		
Ditto	Bankoora	7 9 4	10 0 0		
Ditto	Behar	20 10 9	15 0 0		
Ditto	Chittagong... ...	17 13 9	15 0 0		
Ditto (Additional) ...	Ditto	4 4 8	2 0 0		
Ditto	Cuttack	28 3 9	20 0 0		
Ditto	Dacca	39 9 11	30 0 0		
Ditto (Additional) ...	Ditto	2 7 0	2 0 0		
Ditto	Dinagepore ...	40 0 3	30 0 0		
Ditto	Hooghly	30 12 9	30 0 0		
Ditto	Jessore	25 7 10	20 0 0		
Ditto	Midnapore ...	18 11 0	15 0 0		
Ditto	Moorshedabad ...	24 4 7	20 0 0		
Ditto	Mymensingh ...	36 6 5	30 0 0		
Ditto	Nuddea	23 0 11	20 0 0		
Ditto (Additional) ...	Ditto	2 2 7	2 0 0		
Ditto	Patna	38 4 0	30 0 0		
Ditto	Purneah	2 10 6	2 0 0		
Ditto	Rajshahye... ...	29 0 7	30 0 0		
Ditto	Rungpore	38 14 9	30 0 0		
Ditto	Sarun	27 9 6	20 0 0		
Ditto	Shahabad	35 9 11	30 0 0		
Ditto	Sylhet	16 15 0	15 0 0		
Ditto	Tipperah	29 6 9	20 0 0		
Ditto	Tirhoot	12 5 9	15 0 0		
Ditto	24-Pergunnahs ...	64 9 2	40 0 0		
Ditto (Additional) ...	Ditto	9 6 9	6 0 0		
Judge of the Small Cause Court	Arrah	.....	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Backergunge ...	1 13 0	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Bhagulpore ...	8 15 4	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Beauleah ...	9 8 2	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Chooadangah ...	7 2 0	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Comerkhally ...	2 0 3	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Cuttack	9 3 4	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Chittagong ...	7 2 1	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Dacca	8 9 0	2 0 0	4 0 0	2 0 0
Ditto ditto ..	Dinapore Cantonment	.....	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Hooghly	2 7 11	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Jhenidah	10 8 0	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Jessore	11 5 6	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Kooshtea	11 13 8	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Kishnagurh ...	6 10 3	2 0 0	4 0 0	2 0 0

PART I.—(*Continued.*)

NAMES OF OFFICERS.	STATIONS.	Average monthly amount of expenditure.	Amount proposed by the Board and sanctioned by the Government of India, as per letter No. 395, dated 31st May 1867, forwarded with Government order No. 3159, dated 20th July 1867.	Amount not included in the original statement, or which require formal sanction.	Increase per month.
		Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
Judge of the Small Cause Court	Moorshedabad ...	8 9 6	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Magoorah ...	5 1 7	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Meherpore ...	3 12 4	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Midnapore ...	12 2 10	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Monghyr ...	12 5 5	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Nurail	10 12 4	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Nattore	3 7 0	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Patna and Dinapore	9 9 0	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Pubna	8 2 2	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Santipore	12 15 7	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Sealdah	14 15 10	2 0 0	*4 0 0	2 0 0
Ditto ditto ...	Tirhoot	1 0 0	2 0 0	4 0 0	2 0 0
Ditto ditto ...	Assam	12 14 6	10 0 0		

* A separate allowance of Rs. 4 has been sanctioned for Howrah.

NOTE.—The fixed allowance to include all charges on account of paste, glue, oil, thread, twine, sand-pounce, sand-pots, pounce bags, vinegar, oil for stamps, oil for lamps, oil for sealing and for sharpening knives, stamping inkstand, stamping ink, country ink, country paper of all kinds, and book-binding (*vide* Chapter XXII, section I, clause 11, pages 310 and 311 of Board's Rules.)

PART II.

		Present scale.	*Revised scale.*
		Rs.	Rs.
27	Subordinate Judges	405	405
206	Moonsifs	1,648	2,472

Charges for Printing.

Circular No. 9, *dated the* 13*th March* 1866.

Forwards to the civil and criminal authorities in the Lower Provinces, for their information and guidance, copy of a letter No. 1490, from the Secretary to the Government of Bengal to the Registrar of the High Court, dated Fort William, the 27th February 1866.

I am directed by the Lieutenant-Governor to request that the Court will be good enough to inform the officers subordinate to them that no charge for printing executed at

private presses should be admitted at rates higher than those of the Alipore Jail Press. The rates of charge for book printing have never undergone revision, and are susceptible of reduction in every case.

2. I am to add that no relaxation of the rule requiring public officers to forward their indents for printed forms to the Superintendent of Stationery has been authorized.

Court-houses.

District Judges are directed to submit all applications for the construction of new court-houses, or for repair of the existing buildings, direct to the Government of Bengal, and not to or through the High Court.—(*C. O.*, 1876, *No.* 6, *April 24th.*)

FORMS OF REGISTERS.

COURT'S REGISTER OF CIVIL SUITS IN THE YEAR 18

(Section 37 of the Code of Civil Procedure, and Schedule A appended to Code, Section 42, Act VIII of 1869, B.C.)

Court of the of holden at

Three separate spaces in volume, or three separate volumes, to be devoted to the three several classes of suits—(I) Suits of Small Cause Court Class; (II) Rent suits; (III) Suits for title to land and other suits not within classes I or II.—(See enumeration of sub-classes overleaf.) Moonsifs and Subordinate Judges exercising summary jurisdiction of a Court of Small Causes, Section 29, Act VI of 1871, may devote a farther subsidiary register specially to the cases thus tried.

Date of presentation of plaint.	Number of suit.	Plaintiff.			Defendant.			Claim.			Appearance.			Judgment.			Appeal.		Execution.					Return of Execution.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Particulars.*	Amount or value.	When the cause of action accrued.	Day for parties to appear.	Plaintiff.†	Defendant.†	Date.	For whom.	For what, or amount.	Date of appeal.	Judgment in appeal.	Date of application.	Date of order.	Against whom.	For what, and amount if money.	Amount of costs.	Amount paid into court.	Arrested.	Minute of other return than payment or arrest, and date of every return.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27

* Here enter particulars, such as will enable the annual returns to be compiled from this volume without reference to the original record. Compare classification overleaf.

† In these columns enter whether plaintiff (defendant) appears on the date fixed.

SUB-CLASSES ENUMERATED IN THE DETAILED CLASSIFICATION OF SUITS.

Annual Judicial Statement No. 6.

CLASS I.—Suits of class cognizable by Small Cause Court, but without reference to limit as to appeal or amount.

SUB-CLASSES—

1. On written obligation.
2. On unwritten obligation.
3. On account stated.
4. Money had and received.
5. Goods sold.
6. Breach of contract not mentioned above.
7. Rent not falling within the Rent Law.
8. Moveable property or value thereof.
9. Damages.

N. B.—See pages 263,264 C. O., 1861, No. 176, April 10th, enforcing on all courts, whether invested with summary powers or not, the speedy disposal of all cases of the Small Cause Court class, and for this purpose requiring all courts to devote a subsidiary register specially to cases of this kind.

CLASS II.—Suits for rent and other suits under the Rent Law.

SUB-CLASSES—

1. Arrears of rent, with or without ejectment or cancelment of lease
2. Enhancement or abatement of rent.
3. Relating to distraint.
4. Damages for extortion, or withholding receipts, or on account of illegal restraint or other cause.
5. For pottahs or kubooleuts.
6. For ejectment or recovery of possession.
7. For recovery of money or accounts from agents.
8. All other suits under the Rent Law not included above.

CLASS III.—Suits for title and other suits not falling within classes I or II.

SUB-CLASSES—

1. Suits for immoveable property.
2. Suits for specific performance of contract.
3. Suits to declare and establish rights to real property, including pre-emption, foreclosure, &c.
4. Suits to declare and establish personal rights.
5. Suits for an account.
6. Suits relating to religious endowments.
7. Suits to set aside judgments, contracts, or obligations on the ground of fraud.
8. Suits for dissolution of marriage.
9. Suits for enforcement of matrimonial rights.
10. Suits for partition
11. Suits relating to shipping.
12. Suits relating to religion and caste.

MISCELLANEOUS CASES—JUDICIAL.

(Form suggested. None authoritatively prescribed as yet.)

Court's Register of Miscellaneous original cases requiring a judicial finding and order, i e., all cases other than* (1) *regular suits;* (2) *execution cases; and* (3) *cases before District Judge regarding successions, guardianship, probates, &c.*

Serial number for year.	Date of institution.	(Class of case—* See foot-note).	Any statistical particulars required for compilation of quarterly and annual returns.	Name of petitioner.	Name of opposing party.	Date of transfer, if any, to another court.	Date of decision or final orders if case not transferred.	Nature of final order or decision, if case not transferred: *e.g.*, whether in favor of petitioner or objector.	REMARKS.
1	2	3	4	5	6	7	8	9	10

* None but real cases requiring a judicial finding and order are to be entered in the register of reports, answers or orders upon proceedings from other courts, applications from ministerial officers, must be carefully excluded. These are to be entered in the register of miscellaneous proceedings, non-judicial or administrative. Among the classes of cases to be treated as judicial, and therefore to be entered in this register, are the following:—

1. Applications for leave to sue *in formâ pauperis* (section 297 to be entered in the register pending the sanction to the application, after which, by section 308, Civil Procedure Code, the case is to be treated as a regular suit, numbered and registered in the register of suits).
2. Applications for review of judgment section 376, Civil Procedure Code.
3. Applications under sections 119, 347, Civil Procedure Code, to set aside judgments *ex parte* or in default.
4. Applications by person imprisoned under decree for discharge or surrender of his property (section 280, Civil Procedure Code).
5. Applications under Act XXXV of 1858, regarding the estates, &c., of lunatics.
6. Land acquisition cases, Parts III, IV, Act X of 1870 (District Judge).
7. Cases regarding the custody and guardianship of minors. (The general miscellaneous register will suffice for subordinate courts. District Judges may more conveniently enter in the separate register of succession cases, &c.)
8. Mortgage applications under Regulations I of 1798 and XVIII of 1806 (District Judge).
9. Cases under the Marriage Act (District Judge).

EXECUTION CASES.

(Form suggested. None authoritatively prescribed as yet)

Court's Register of Judicial cases arising in the execution of decrees.

[Devote three separate spaces in register, or three separate volumes, as may be convenient, to (I) cases of Small Cause Court class; (II) rent suits; (III) other suits.]

N.B—Under section 246, Civil Procedure Code, claims and objections to sale of attached property are to be treated as a suit, and therefore must be entered in the Register of Suits prescribed by schedule A, and section 37, Procedure Code.

Serial number for year.	Date of application for execution.	Year and index number of suit.	Date of decree.	NAMES OF PARTIES TO DECREE.		Mode of execution applied for.	PARTICULARS AS TO ACTUAL EXECUTION OF DECREE.				In case of any claim or objection, a reference to the place in the Register of Civil Suits where the claim has been entered as a suit.	REMARKS.
				Decree-holder.	Judgment debtor.		What proceedings taken in execution.	When proceedings taken.	Whether decree executed partially or wholly.	Amount realised.		
1	2	3	4	5	6	7	8	9	10	11	12	13

* Under one execution case, in any given decree, are to be entered all conflicting claims that arise in the course of the execution. These separate claims are not to be treated as so many distinct cases; accordingly, in writing entries on the register, space enough should be left at columns 7, 8, 9 for any further requirements.

Register of Miscellaneous original cases requiring orders, non-Judicial.

(Form suggested.)

N B.—Cases on this register are *not* to be included in the quarterly returns.

1	2	3	5	6	6
Serial No. for year.	Name of petitioner or nature of document occasioning the case.	Abstract of case.	Date of institution.	Date of order.	Abstract of orders.

COURT'S DAILY REGISTER SHOWING ATTENDANCE OF WITNESSES.

C. O., 1873, *No.* 20, *August* 14*th.*

The witness on reporting himself to the Nazir or other officer of the court is to be entered forthwith in this book, the columns of which are all to be duly and regularly filled up, and the book is to be signed daily by the Judge, Subordinate Judge, or Moonsiff, presiding in the court.

Diary of Witnesses' attendance 187 .

Date of first attendance.	Number of case.	NAMES OF WITNESSES PRESENT. For plaintiff.	NAMES OF WITNESSES PRESENT. For defendant.	Date of examination.	Date of discharge.	Further attendance if any.	Expenses paid. (Amount.)	Receipt of witness or party.	Remarks.
1	2	3	4	5	6	7	8	9	10

Court's daily Register or Diary of all Judicial Proceedings.

C. O, 1870, *No.* 2, *February* 14*th.*

I.—In every civil court subordinate to the High Court at Fort William in Bengal, there shall be kept a book to be called "the Diary of the Court of , at ," (in the vernacular languages the term *Roznamcha* may be used). These books will be supplied to each court from the Stationery Office, with the pages numbered in type and substantially bound, and no book is to be used for the purpose, except those so supplied.

II.—In this book shall be recorded the whole of the proceedings of the court to which it belongs on every successive day of sitting, including every matter which may come before the court, and every order made, whether final or otherwise: the record shall be in the handwriting either of the presiding Judge, or of the principal ministerial officer in attendance. It shall be legible and neatly kept.

III.—The record of each day shall commence with the name and official designation of the presiding Judge, and with a statement of the hour at which the sitting began, and shall terminate with a statement of the hour at which the court rose for the day.

IV.—The entry of every order affecting any party before the court shall be signed, in the space left for that purpose in the margin of the book, by the party or parties, or by their pleader or pleaders: and the entries for the day shall be signed at the end thereof by the Judge on each day before he leaves the court.

V.—It shall be the duty of the Zillah Judge or Judicial Commissioner, at every inspection of a subordinate court, to satisfy himself, and report to the High Court, that the diaries have been kept in precise conformity with these rules; or, if they have not been so kept, he will take proper order in the matter and report the circumstance for the information of the High Court. The fact of such inspection by the Zillah Judge should be noted in the book under his signature with a statement of the condition in which he found it.

VI.—The diary should be kept in the custody of the serishtadar of each court, or of such officer as the court may specially appoint for that purpose, and should not be transmitted to the sudder station of the Zillah Judge for inspection.

VII.—Every Judge, Subordinate Judge, or Moonsif, should take care to furnish himself, from the Stationery Office, with a new book at least one month before the book in use is completely filled.

VIII.—As the subordinate courts have now by law complete control over their own establishments, and as the recent increase in salaries enables them to obtain the services of competent officers, the High Court will expect these rules to be observed without failure.

IX.—The diaries shall come into use from the 1st May next.

JUDGMENTS NOT TO BE ENTERED IN DIARY IN ANTICIPATION OF DELIVERY AND SIGNATURE.

C. O., 1873, *No.* 13, *June 19th.*

It has recently come to the knowledge of the High Court that a Subordinate Judge, now dead, had been accustomed to show as decided, in his monthly and quarterly returns, cases in which no judgment had been delivered, although a decision had been announced and noted in the diary; the judgments in such cases being afterwards prepared and signed as leisure permitted.

2. The Court find it necessary to point out that such a practice is reprehensible, as being not merely opposed to law, but productive of mischief in various ways, and also amounting to a misrepresentation of facts.

3. It is the duty of District Judges to take care that no such practice prevails in the courts under their control; and the means of prevention are simple. The Judge, whenever he inspects an inferior court, should examine the diary, and, calling for some of the cases last decided, should satisfy himself that the judgments have been given in correspondence with the diary entries.

4. But the Court believe that, where the District Judges' control is perfectly maintained, such irregularities will not occur at all, and that such mechanical check will need only formal observance.

CASE LIST.

COURT'S MEMORANDUM BOOK FOR NOTING UP DAY BY DAY THE CASES AS SET DOWN IN ADVANCE FOR THEIR SEVERAL DAYS OF HEARING.

Extract from C. O, 1859, *No.* 147, *July 29th.*

Fixing a day for hearing. Sections 41 and 45, Procedure Code.

The court should fix a day without loss of time for the appearance of the defendant. This is a matter which will require considerable care and attention, especially if the parties are to appear in person; for it is very desirable that postponements should take place as seldom as possible, and that, as a general rule, cases should always be heard upon the day fixed. The date specified in the summons also ought in all cases to be so far distant as to afford the defendant ample time to prepare his defence. No general rule can be laid down on this subject, but the court issuing the summons ought particularly to take into consideration the nature of the case, whether simple or complicated, slight or important, and the state of its own files, together with the particulars noted in section 45.

Memorandum book and case list.

A memorandum book, with columns for each court day in the year, showing the case set down for trial on each date, will greatly facilitate a decision on this point, and should invariably be kept. A case list, setting forth the day fixed for the hearing of each case, ought also to be suspended in the court-room for the information of parties and their pleaders.

Nature of summons how determined.

In determining whether the summons shall be for the settlement of issues only, or for the final disposal of the case [section 41], the court must of course be guided entirely by the nature of the suit, and the probability or otherwise of the facts stated in the plaint being disputed by the defendant on grounds which will require the production of much evidence, or will involve much forensic contention. Where the case appears simple, and it seems probable that a correct judgment can be formed at the first hearing from the examinations of the parties or their agents, and such evidence, oral or documentary, as they can bring with them, the summons will of course be for a final disposal of the case at the first hearing.

[Headings for above register. 1. Date. 2. Class of suit, also its index number. 3. Purpose (*i. e.*, whether set down for settlement of issues, for final hearing, &c. 4. Previous day on which heard or later day to which postponed, &c. 5. Remarks.]

COURT'S REGISTER OF PLAINTS RETURNED AND OF PLAINTS REJECTED.

A register shall be kept of all plaints returned, and another of all rejected plaints in the following form:—

1	2	3	4	5
Date of presentation.	By whom presented.	Ground of { return, / rejection concisely stated.	Date of { return. / rejection.	Signature of judicial officer.

These registers should be bound, the pages numbered, and each page stamped with the court's seal. They should be filled up on the bench by the serishtadar, or other head officer present, when the order is passed; and the amlah should not be permitted to fill them up afterwards, or in a separate room from the presiding officer.—(*Extract from C. O.*, 1859, *No.* 147, *July 29th.*)

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* Or in same volume, separate spaces for the purpose.

Court's Register of Letters, &c., received.

(Form ordinarily employed.)

Separate Registers in this form for English and for Vernacular correspondence; also separate volume, or section of volume, for any court or office with which there are frequent communications.

Serial number of letter in order of receipt (series for year).	Date and number of letter received.	From whom received.	Subject.	Date and index number of reply from court.	Index number of bundle in which the letter is kept (series of index numbers for year).	Remarks.
1	2	3	4	5	6	7

Court's Register of Letters, &c., despatched.

(Form ordinarily employed.)

Separate Registers in this form for English and for Vernacular correspondence; also separate volume, or section of volume, for any particular court or office with which there are frequent communications.

Serial number for year.	Date of letter.	To whom sent.	Subject.	Index number of bundle in which the draft of the letter is kept.	Date and index number of reply to court.	Remarks.
1	2	3	4	5	6	7

Court's Register of Commissions issued under Section 175, Code of Civil Procedure, from the Court of District during the Quarter 18 .

(Prescribed by C. O., 1873, No. 10, May 31st.)

Consecutive number for the year.	Number of suit.	Party applying.	Date of application.	Place to which commission to be sent.	Person to whom addressed.	Fee.	Date of issue.	Date of return.	Executed or not.	Remarks.
1	2	3	4	5	6	7	8	9	10	11

Court's Register of Receipts on account of Civil Court Ameens (with specimen entries).

[Prescribed by C. O., 1874, No. 11, March 14th.]

Date.	Court.	Nature of employment.	Ameen employed.	Time occupied.	Amount.	Remarks.
1	2	3	4	5	6	7
					Rs. A. P.	
1st January	Sub-Judge ...	Local investigation, mouzah Suntoshpore.	Shekh Dilawur	10 days	50 0 0	Rs. 20 refunded.
3rd	Moonsif of Sundip	Sale of moveables	R C Doss	1 day	5 0 0	

Court's Register of Expenditure on account of Civil Court Ameens (with specimen entries).

[Prescribed by C O. 1874, No. 11, March 14th.]

Date.	Nature of expenditure.	Amount.	Remarks.
1	2	3	4
2nd January	Salary of Dilawur	70 0 0	
3rd „	Refund overcharge in case of deposited	15 0 0	

Court's Roll of Pleaders and Mukhtars Practising in the Court.

Section 12 of Act XX, 1865.

[Form suggested.]

The District Judge will also keep similar rolls in respect of all the courts subordinate to him.

1	2	3	4	5	6	7	8	9
Serial number on the roll.	Name.	Father's name.	Family residence.	Nature of qualification.	Age at time of enrolment.	Date of first certificate.	Dates of renewal of certificate—1877, 1878, 1879, 1880, 1881.	Remarks.

Court's Register of Records sent out from Record-room.

[Form not authoritatively prescribed.]

N.B.—Records not to be indiscriminately sent for; ordinarily the proper course for bringing papers from records before a court is to file attested copies or extracts.—(*C.O.*, 1875, *No.* 15, *December* 16*th.*)

1	2	3	4	5	6	7	8
Serial number for year.	Particulars of record sent out.	To whom sent.	For what purpose.	Date of sending out.	Signature or date of acknowledgment of receiving the record.	Date of return.	Signature of record-keeper.

Court's Register of Applications for information from Record-room.

(*Form ordinarily employed in accordance with C. O.*, 1870, *No.* 18, *June* 23*rd.*)

1. Number and date of application. 2. Name and residence of applicant. 3. Nature of the information required. 4. Date on which the information is to be ready. 5. Signature of officer receiving the application. 6. Remarks.

Court's Register of Applications for copies from Record-room.

(*Form ordinarily employed in accordance with C. O.*, 1870, *No.* 18, *June* 23*rd.*)

1. Number and date of application. 2. Name, residence, and description of applicant. 3. Specification of paper of which the copy is required. 4. Case or proceeding in which such paper is to be found or was filed. 5. Name of officer or department where the paper in question is to be found. 6. Time when copy will be ready. 7. Name of copyist. 8. Name of officer receiving the application, who fills up the three preceding columns. 9. Remarks.

FORMS ORDINARILY EMPLOYED FOR CERTAIN REGISTERS, BUT NOT YET AUTHORITATIVELY PRESCRIBED.

(Column headings here printed in letter-press form instead of in tabular form. Such registers to be employed only where the transactions are numerous enough to call for separate books or portions of books.)

COURT'S REGISTER OF PEONS.

1. Serial Number. 2. Name of peon. 3. Age of peon at date of appointment. 4. Place of abode. 5. Father's name. 6. Date of appointment. 7. Signature of nazir. 8. Signature of presiding officer. 9. Salaried or for occasional employment.

COURT'S REGISTER OF OCCUPATION OF PEONS

1. Number of peon in Register. 2. Name of peon. 3. Salaried or occasionally employed. 4. Distance travelled this month. 5. Number of days absent from office. 6. Number of journeys taken this month, divided into (*a*) carrying one process, (*b*) carrying two, (*c*) carrying three, (*d*) carrying four, (*e*) more than four, (*f*) total. 7. Number of processes carried this month. 8. Salary or earnings.

COURT'S REGISTER OF PROCESSES.

1. Serial number. 2. Name of applicant for service of execution. 3. Name of party on whom to be served. 4. Number in Register of peon employed. 5. Name of place at which served. 6. Distance of place from court. 7. Fee levied. 8. Date and hour of peon's departure. 9. Date and hour of peon's return. 10. Time occupied.

COURT'S REGISTER OF RENT DEPOSITS AND OF NOTICES OF RENT DEPOSIT.

1. Serial number. 2 Names of both parties and their place of residence. 3. Date of application. 4. Abstract of the case. 5. Amount deposited. 6. Date of notice. 7. Amount withdrawn.

COURT'S REGISTER OF NOTICES OF ENHANCEMENTS UNDER THE RENT LAW.

1. Serial number. 2. Date of application. 3. Name and residence of applicant. 4. Name and residence of tenant. 5. Holding on account of which the enhancement is to be made. 6. Existing amount of rent. 7. Enhanced amount of rent. 8. Date of service of notice. 9. How served.

Register of Notices of Relinquishment under the Rent Law.

1. Serial number. 2. Date of application. 3. Name and residence of applicant. 4. Name and residence of landlord. 5. Holding to be relinquished. 6. Date on which it is to be relinquished. 7. Date of service of notice. 8. How served.

Court's Register of Lands and Houses owned by Ministerial Officers.

(A page to each officer.)

Registers ordered or alluded to in Circulars of the High Court, &c., precise tabular forms of which have been left to the discretion of the local Courts.

Receipt-book for documents returned.—Prescribed in section 137, Civil Procedure Code. May be combined with a register of documents filed.

Copying fees—Register of copying fees realised and (or) disbursed.—Prescribed by circular order, 1861, No. 178, May 13th; circular order, 1870, No. 18, June 23rd; and circular order, 1875, No. 8, June 29th.

Apprentices.—Register of apprentices. Circular order, 1865, No. 17, August 24th.

Daily Register of value of court fees filed.
Daily Register of stamps filed.
} Required in order to compile the statistical information required for the annual reports and statements.

Register of Processes issued, and showing how they have been executed.
Court's daily registers showing from day to day how each process-server has been employed.
} Required for the control over process-serving establishment.

Daily registers of business, viz. summons book and register prescribed for Courts of Small Causes and for Moonsifs and Subordinate Judges exercising such jurisdictions in certain classes of cases. See under SMALL CAUSE COURTS.

Daily register of sittings, prescribed for Small Cause Courts. See monthly returns.

REGISTER OF REGULAR APPEALS.

(Section 341 of the Code of Civil Procedure; also Schedule C appended to the Code.)

COURT AT

Judge's or Subordinate Judge's Register of Appeals in the year 18 , *from Decrees in regular Civil Suits.*

Separate spaces in volume, or separate volumes, to be devoted to appeals from each several court; also to the several classes of suits appealed from.

Date of memorandum.	Number of appeal.	APPELLANT.			RESPONDENT.			DECREE APPEALED FROM.				APPEARANCE.			JUDGMENT.			REMARKS.
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Of what court.	Number of original suit.	Particulars.*	Amount or value.	Day for parties to appear.	Appellant.†	Respondent.†	Date.	Confirmed, reversed, or altered.	For what, or amount.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19

* Here enter such particulars as will enable the quarterly and annual returns to be compiled without reference to the original records.
† Here enter whether appellant appears or defendant appears.

BENGAL SECRETARIAT LIBRARY.

Judge's Register of applications or cases in testamentary and tutelary jurisdictions, comprising, among others—

1. Applications for certificate of representation to deceased; Act XXVII of 1860.
2. Applications for certificate of guardianship over minors; Act XL of 1858.
3. Applications for probates and letters of administration; Act X of 1865, and Act XXI of 1860.
4. Applications for relief against wrongful possession in succession cases; Act XIX of 1841.
5. Applications regarding the guardianship of minors; Act IX of 1861.
6. Applications regarding the care of lunatics' estates and the guardianship of their persons; Act XXXV of 1858.
7. Cases of unclaimed property; Regulation V of 1799.

(Form suggested.)

Serial Number for year.	Date of institution	Class of case.	Act or Regulation and section thereof under which case instituted.	Statistical particulars for compiling quarterly and annual report.	Petitioner.	Opposing party.	Date of decision or final order.	Nature of final order or decision.	Remarks.
1	2	3	4	5	6	7	8	9	10

Register of Miscellaneous Appeals.

Form similar to that for appeals from decrees in regular Civil Suits. In this register will be entered the following among others:—

1. All appeals from orders in miscellaneous cases,—judicial.
2. All appeals from orders in execution cases.
3. Appeals under section 36, Civil Procedure Code, from order rejecting plaint.
4. Appeals from orders under section 94, Civil Procedure Code, as to injunctions.
5. Appeals under section 365, Civil Procedure Code, as to fine.
6. Appeals under section 36, Act VI of 1871, from orders as to ministerial officers.
7. Appeals under section 268, Act X of 1872, as to contempts

Judge's Index to the copy book of Wills deposited with District Judge under Section 244, Act X of 1865; also of probate or letters of administration granted under Sections 254, 255, Act X of 1865.

(Register prescribed by C. O., 1867, No. 34, December 3rd.)

Name of testator.	Residence, &c.	Reference to copy book by number, year, &c.*	Page of copy book in which copy entered.
1	2	3	4

* *N.B.*—Where the entries for a year are not numerous, it will be convenient to have the index in the copy book itself.

Judge's File—Registers or Indexed Tables of Contents of Records.

(*Fehrist* File.)

C. O, 1874, *No.* 7, *March 4th.*

The Court is pleased to prescribe, for adoption by the subordinate civil courts, the accompanying form of *fehrist* or list of cases to accompany the records of all decided cases sent in by Subordinate Judges and Moonsifs for deposit in the District Judge's office.

2. These statements or printed forms are to be always uniform in size and shape, in order to be bound up, so as to constitute a register of decided cases useful for the purpose of tracing and identifying records.

Number from list.	Number from court's register.	Description of case.	Date of decision.	Numbered paper or papers contained in the nathi.	Remarks.
1	2	3	4	5	6
1	10 of 1873	Regular Rent Suit ...	4th October 1873.	121	
2	67 of 1872	Miscellaneous ...	5th January 1873.	97	
3, &c.	19 of 1872	Regular S. C. Court...	4th February 1873.	54	

PERIODICAL RETURNS.

Civil.

Blank statements not to be sent up to High Court, but only enumerated.

The Court direct that in future blank statements be not sent up with civil quarterly statements, as they only cumber the office. Whenever therefore any statement is blank, a note to that effect will be entered at the foot of statement No. 1, and the blank statements will not be sent up.—(*C. O.*, 1868, *No.* 12, *November 27th.*)

Classification of suits prescribed by Circular Order, 1870, No. 32, November 8th—Judicial Statement No. 6.

CLASS I.—Suits for money and other suits of the class cognizable by Courts of Small Causes.

Sub-Classes—

1. On written obligation.
2. On unwritten obligation.
3. On account stated.
4. Money had and received.
5. Goods sold.
6. Breach of contract not mentioned above.
7. Rent not falling under the Rent Law.
8. Moveable property or value thereof.
9. Damages.

CLASS II.—Rent suits and other suits under the Rent Law.

Sub-Classes—

1. Arrears of rent, with or without ejectment or cancelment of lease.
2. Enhancement or abatement of rent.
3. Relating to distraint.
4. Damages for extortion, or withholding receipts, or on account of illegal restraint or other cause.
5. For pottahs or kuboolyuts.
6. For ejectment or recovery of possession.
7. For recovery of money or accounts from agents.
8. All other suits under the Rent Law not included above.

CLASS III.—Suits for title and all suits not falling within Classes I and II.

SUB-CLASSES—

1. Suits for immoveable property.
2. Suits for specific performance of contract.
3. Suits to declare and establish rights to real property, including pre-emption, foreclosure, &c.
4. Suits to declare and establish personal rights.
5. Suits for an account.
6. Suits relating to religious endowments.
7. Suits to set aside judgments, contracts, or obligations on the ground of fraud.
8. Suits for dissolution of marriage.
9. Suits for enforcement of matrimonial rights.
10. Suits for partition.
11. Suits relating to shipping.
12. Suits relating to religion and caste.

NOTE ON THE DESIGNATION OF CLASS I.—"SUITS OF SMALL CAUSE COURT CLASS."

The designation of the Class I—"Suits of Small Cause Court Class" refers to the description of the suit, and has no reference to any limit as to amount, or any form of jurisdiction. The designation applies therefore to suits for money in whatsoever court tried, whether vested with summary jurisdiction or not. Moonsifs and Subordinate Judges who, in addition to their ordinary jurisdiction, are also vested under section 29, Act VI of 1871, with the summary jurisdiction of a Court of Small Causes in cases up to Rs. 500 and Rs. 50 respectively, will in their quarterly and other returns enumerate separately the two sets of cases dealt with under the two modes of jurisdiction. In tabular returns the two kinds of cases should be bracketed together in the appeals to the court in question.—(*C. M.*, 1876, *No. A*, *January 12th.*)

MISCELLANEOUS CASES.

The quarterly statement C is intended to exhibit all miscellaneous cases instituted and disposed of by the various judicial courts in the district. All business heretofore entered in the statements under the head of "other miscellaneous proceedings," and which for the most part consists of reports, answers to, or orders upon, proceedings from other courts, applications from ministerial officers, &c., must be carefully

excluded, and nothing but *real* cases requiring a judicial finding and order should be entered. Proceedings under section 45 and section 75, Act VIII (B.C) of 1869, for example, should not be included in statement C.—(*C. O.*, 1874, *No.* 2, *January 26th, paragraph* 7.)

CLASS I.

Cases of Small Cause Court Class—Arrangements for speedy trial of these.

C. O., No. 176, *dated* 10*th April* 1861.

Separate lists to be prepared by Moonsifs of cases of the Small Cause Court class.

It being the wish of Government that every practical facility should be given to the speedy disposal of cases which, under section 3 of Act XLII of 1860,* would be cognizable by Small Cause Courts, if those courts could be conveniently introduced into every district, Zillah Judges are requested by the Sudder Court to direct the Moonsifs in their districts to prepare a separate list of these suits, including all such cases as may have already been instituted since the 1st April, and may be hereafter brought in their courts.

Three days a week to be set apart for the hearing of such cases, and a monthly return of them to be made.

2. They will also instruct the Moonsifs to set apart the first three days of every week to the hearing of these cases, and to prepare and transmit a monthly statement in the form appended to this letter, showing the number of suits of this description pending, instituted, and decided, and the monthly progress made in bringing them to a hearing.

Description of the claims comprised by such suits.

3. The particular suits referred to comprise claims for money due, whether on bond or other contract, or for rent of houses (as distinct from rent of land which are cognizable by the Revenue Authorities alone, or by Moonsifs specially invested with the powers of Deputy Collector under Act X of 1859,†) or for personal property, or for the value of such property, or for damages, when the debt, damage, or demand does not exceed the value of Rs. 300.

May be decided as regularly and expeditiously as in Small Cause Courts.

4. By entering all claims of the description enumerated above in a separate list, and by appropriating three days in every week exclusively to the hearing of them, the Court consider these cases may be decided under the new procedure of Act VIII of 1859 by the Moonsifs, as regularly and as expeditiously as they would be in courts established under the provisions of Act XLII of 1860.‡

Two days in the week to be devoted to the trial of appeals in these cases.

5. With the view, moreover, of expediting the hearing of these cases in the appellate courts, (those decisions are now final by Act XLII of 1860,‡) and rendering the passage of them through the ordinary courts as speedy as possible, the Court also direct that the several appellate courts of your district, including your own, be required to devote two days in the week to the trial of these particular appeals, and that they be entered in separate lists to be kept for that

* Superseded by Act XI of 1865.
† Now Act VIII (B.C.) of 1869, as to all districts in which the latter law is in force.
‡ Now Act XI of 1865.

purpose, and that monthly statements in the form appended be transmitted to the Court, together with those from the court of first instance, for submission to the Government.

Separate lists not to interfere with the register enjoined by section 38, C. P. C.

6. You are requested to observe, and to inform your subordinates, that the separate list of cases to be prepared in compliance with this order are not to interfere with the general register of civil suits required to be kept up under section 38, Act VIII of 1859. These separate lists are in addition to those required by the Act, and for a special purpose.

C. O., No. 180, *dated* 15*th July* 1861.

Difference in the jurisdiction of regular Civil Courts and Small Cause Courts.

With reference to, and in continuation of, circular No. 176, dated the 10th April 1861, calls attention to the difference in the jurisdiction of the regular civil courts and of the Courts of Small Causes constituted under Act XLII of 1860.*

The former regards in small causes, the birth-place of the cause of action; the latter, place where defendant resides or works for hire.

2. Under the provisions of Act VIII of 1859, the jurisdiction of the regular civil courts extends in suits for trifling amounts, other than for land, to cases where the *cause of action* has occurred within the territorial limits of the court, while the juricdiction of the Small Cause Court under Act XLII of 1860* is confined to those cases where the defendant resides, or works for hire, within the limits of the court's territorial jurisdiction.†

Only cases cognizable by Small Cause Courts to be included.

3. In carrying out the instructions conveyed in circular No. 176, you should remember that only such cases as would properly be within the jurisdiction of a Small Cause Court are to be included in the list therein prescribed, *i.e., cases in which the defendant resides, or works for hire, within the court's territorial jurisdiction.* Cases where the court has jurisdiction only, because the cause of action has arisen within its territorial limits, should be excluded from the list.

Explanations as to Cases of Small Cause Court Class in Quarterly Returns.

The provisions of the above circular order 176 of the late Sudder Court, dated 10th April 1861, are to remain in force, and the explanations heretofore required in respect of particular classes of suits will continue to be submitted.—(*C. O.*, 1873, *No.* 25, *December* 30*th*, *paragraph* 3.)

CLASS II.

Rent Suits and other Suits under the Rent Law.

In the quarterly as well as in the annual statements the description "rent suits" or "rent cases" will include all suits under the Rent

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* Now Act XI of 1865.

† "Or if the cause of action arose within the said local limit, and the defendant, at the time of the commencement of the suit, shall, by his servant or agent, carry on business or work for gain within those limits."—*Vide* section 8, Act XI of 1865.

Law, Act VIII (B.C.) of 1869, which are arranged under the sub-headings specified in the prescribed form for the annual statement; but the instructions in regard to the speedy trial of suits, and the explanations in respect of cases pending over six weeks, relate only to suits for rent due and owing.—(*C. O.*, 1873, *No.* 25, *December* 30*th*, *paragraph* 4.)

CLASS III.

Suits for title and other Suits.

The heading "other suits" will thus comprise the same denominations in the annual and in the quarterly statements.—(*C. O.*, 1873, *No.* 25, *December* 30*th*, *paragraph* 5.)

Latest dates for despatch of Periodical Returns and Reports.

C. O., 1875, *No.* 4, *May* 20*th*.

Much inconvenience being caused by the unpunctual and irregular submission of civil and criminal statements by judicial officers, the Court are pleased to intimate, for the guidance of Judicial Commissioners, Judges, and Magistrates, that the several returns and statements should be invariably despatched on or before the dates noted in respect of each:—

1. Monthly statements on the 15th of the month following.
2. Quarterly statements on the 20th of the month following the expiration of the quarter.
3. Annual statements on the 15th February of the year following that to which they relate.

2. As regards the Administration Reports, the attention of District and Sessions Judges is drawn to the late Sudder Court's circular order No. 107, dated 25th November 1850 [see page 294], which has never been superseded, and which fixes the 1st February as the latest date for submission of the annual reports; that time the Court are now pleased to extend to the 15th February, by which date the reports must be invariably despatched.

3. Subordinate courts of all kinds should be strictly required to submit their returns in time to enable their superiors to comply with this order.

Monthly Returns to Judges and Magistrates from Courts subordinate to them.

C. M., 1870, *No.* 7, *December* 17*th*.

Forwards copy of a letter [No. 3816, dated the 17th December 1870, from the Registrar of the High Court to the Superintendent of Stationery] to all Zillah Judges and District Magistrates for information and guidance, with the request that, in making their indents upon the Superintendent of Stationery, they will pay particular attention to the instructions given to that officer in the 4th paragraph of the

(*Copy.*)

annexed letter, and invariably inform him of the number of slip statements required by them in English and the Vernacular.

With a view to enable the Civil and Criminal authorities subordinate to Civil and Sessions Judges to make periodical returns to the latter in such forms as shall be available for the preparation of the *quarterly* returns enjoined on such Judges by circular order No. 31, dated 4th November last, the Court have prepared *slip forms* (A, B, C, & D) as per margin, of which specimens are sent herewith, and direct me to request you will be so good as to provide at once a sufficient supply of the same for the use of Subordinate Judges and Moonsifs, as well as of District Magistrates and Sub-divisional Officers.

Forms Civil and Criminal.
See pages 267-270.

A. Statement of *civil* work in the court of Subordinate Judge or Moonsif, as the case may be.
B. Statement of appeals before the courts of Subordinate Judges.
C. Statement of miscellaneous work. (Two forms bear this letter, one for Subordinate Judges, the other for Moonsifs).
D Statement of offences reported and persons tried.

2. As regards the *civil* forms (A, B, & C), I am to point out that statement B, which relates to appeals only, will not be required for Moonsifs whose courts are purely courts of original jurisdiction: of this form, therefore, a smaller supply will suffice. Specimens of the three forms above mentioned, in both Bengali and Urdu,* are sent herewith. These returns will be submitted by the various subordinate courts to the Judge monthly. Each officer will therefore require twenty-four as a year's supply, *i.e.*, one for despatch and one for record in his office each month. To this number six more may be added to meet contingencies, accidents, &c. A year's supply therefore to each subordinate civil officer should not exceed thirty copies.

* * * * *

4. As the above return will be required to be made *quarterly*, and as two copies will be necessary for each officer, one for his office draft and the other for the despatch copy, eight copies would be necessary, to which might be added four copies to provide for accidents and other contingencies. It will therefore be sufficient if twenty copies of each form are provided by you as a year's supply for each officer requiring them.

* * * * *

6 In requesting you, in the first paragraph of this letter, to lay in a sufficient stock of these statements, the Court are particularly anxious to avoid a very large stock of vernacular slips being at once printed. It is their intention to direct Judges and Magistrates, in making their indents, to specify the number of slip statements that they will require in English and in the Vernacular, and, after these forms have been in use a short time, you will probably not find much difficulty in estimating, with tolerable exactness, the number of both kinds which you will require to keep in store.

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*The only Urdu Judgeships are Bhagulpore, Gya, Patna, Sarun, Shahabad, and Tirhoot: the rest may be supplied with Bengali forms.

7. I am to remind you, in conclusion, that all indents from Subordinate Judges and Moonsifs are to be submitted through their superior, the District Judge, as provided in paragraph 3 of circular order No. 16, dated 17th June 1870.

P.S.—A set of these forms, when printed or lithographed, should be sent for record in this office.

A.

PART I.

Statement of Civil Work in the Court of Subordinate Judge or Moonsif (as the case may be) in the District of for of the year 187 .

Class of Courts.	ORIGINAL SUITS.															Remarks.
	Small Cause Court Class.					Rent Suits.					Other Cases.					
	Pending.	Instituted or received by transfer.	Total.	Disposed of by final order or transfer.	Remaining.	Pending.	Instituted or received by transfer.	Total.	Disposed of by final order or transfer.	Remaining.	Pending.	Instituted or received by transfer.	Total.	Disposed of by final order or transfer.	Remaining.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17

A.

PART II.

Pending Cases.

Class of Courts.	SMALL CAUSE COURT CLASS—PENDING		RENT SUITS—PENDING		OTHER CASES—PENDING		REMARKS.
	More than 6 weeks.	More than 3 months.	More than 6 weeks.	More than 3 months.	More than 3 months.	More than 6 months.	
1	2	3	4	5	6	7	8

B.

PART I.

Appeals.

Class of Courts.	SMALL CAUSE COURT CLASS.					RENT CASES.					OTHER CASES.					REMARKS.
	Pending.	Instituted or received by transfer.	Total.	Disposed of by final order or transfer.	Remaining.	Pending.	Instituted or received by transfer.	Total.	Disposed of by final order or transfer.	Remaining.	Pending.	Instituted or received by transfer.	Total.	Disposed of by final order or transfer.	Remaining.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17

B.

PART II.

Pending.

Class of Courts.	SMALL CAUSE COURT CLASS—PENDING			RENT CASES—PENDING			OTHER CASES—PENDING			REMARKS.
	More than 6 weeks.	More than 3 months.	More than 6 months.	More than 6 weeks.	More than 3 months.	More than 6 months.	More than 3 months.	More than 6 months.	More than 1 year.	
1	2	3	4	5	6	7	8	9	10	11

C.

PART I.

MISCELLANEOUS.

ORIGINAL CASES.

In the Court of the Subordinate Judge of

Class of Courts.	ORIGINAL.					DETAIL OF PENDING CASES.			REMARKS.
	Pending.	Instituted or received by transfer.	Total.	Disposed of by final order or transfer.	Remaining.	More than 6 weeks.	More than 3 months.	More than 6 months.	
1	2	3	4	5	6	7	8	9	10

C.

PART II.

Miscellaneous Appeals.

Class of Courts.	MISCELLANEOUS APPEALS.					DETAIL OF PENDING CASES.			REMARKS.
	Pending.	Instituted or received by transfer.	Total.	Disposed of or transferred.	Remaining.	More than 6 weeks.	More than 3 months.	More than 6 months.	
1	2	3	4	5	6	7	8	9	10

MONTHLY RETURNS TO DISTRICT JUDGE FROM SUBORDINATE COURTS.

C. O., 1867, *No.* 26, *September* 11*th.*

The High Court are pleased to direct that the statements of civil business now submitted by the Judges monthly be in future submitted *quarterly*.

2. It is not intended by these orders to supersede the submission of monthly statements by the Subordinate Judges to the Judge as at present. The Principal Sudder Ameens, Sudder Ameens, and Moonsifs will submit, as hitherto, their statements every month to the Zillah Judge, and the Court expect that the Judges will carefully examine those statements and satisfy themselves that the business of the subordinate courts is transacted with due despatch, as well as with method, and with personal attention to the cases as they come before them in execution, as well as before decree.

MONTHLY RETURNS TO DISTRICT JUDGE FROM MOONSIFS AND SUBORDINATE JUDGES EXERCISING POWERS OF A SMALL CAUSE COURT.

C. M., 1875, *No.* 3, *February* 1*st.*

The Court directs that, for the future, wherever a Moonsif is vested with the powers of a Small Cause Court under section 29, Act VI

of 1871, the work done by him in that capacity shall be shown in a separate monthly return, to be prepared in the annexed form, which may be submitted to the District Judges in the Vernacular, or in English, as each Moonsif may find most convenient.

2. From the returns thus received, the District Judge will prepare one statement, to be submitted not later than the 15th of each month, exhibiting the work of each Moonsif in his district who exercises those powers.

3. The cases exhibited in these returns will nevertheless continue for the present to be also included in the regular quarterly civil statements under the usual heads, and will be likewise shown in the annual statements, *e.g.*, No. 8, that showing the general result of the trial of civil suits.

4. This rule will apply to the Subordinate Judge of Sylhet and to any other officer, of whatever rank or designation, who exercises Small Cause Court powers below those of a regular Small Cause Court.

Work done by Moonsif's vested with Small Cause Court Jurisdiction under Section 29, *Bengal Civil Courts' Act* 187, *during*

Courts.	Pending.	Received by institution and transfer.	Transferred.	Decided on trial.	And otherwise.	Remaining.	Number pending over 6 weeks.	Longest period of pendency of any case decided in the month.	Remarks.
1	2	3	4	5	6	7	8	9	10
Baboo Moonsif of									

Forms of Quarterly Returns A, B, C.

The quarterly statements A, B, and C will henceforth be submitted by the District Judges to the High Court in the revised forms now circulated, commencing, where they have not been already adopted, with those for the 1st quarter of 1874.—(*C. O.*, 1874, *No.* 2, *January 26th.*)

Explanations of the forms as originally prescribed.

(*C. O.*, 1870, *No.* 31, *November 4th.*)

1. The quarterly civil statements to be submitted by the Judges to the High Court are three in number, marked A, B, and C.

2 Statement A will contain the total number of original suits before each of the civil courts in the district during the quarter. The first column marked "class of courts" will contain the names and official designation of each judicial officer in the district. The other columns explain themselves and require no remark. Part II, statement A, gives a detail of the cases of each class which, at the close of the quarter, are pending more than six weeks and three months as regards Small Cause Court cases and rent suits; and more than three months and six months as regards "other cases" An explanation, as at present, should be given with regard to all Small Cause Court and rent cases which are pending for more than six weeks, and of all other cases which are pending more than six months. If there is not room on the margin of the statement for the explanations, they should be written on a separate sheet of foolscap, and each explanation should give the number and year of the case referred to.

3. Statement B will comprise the total number of appeals before each of the appellate courts in the district. Column 1, headed "class of courts," will comprise the name and official designation of each officer presiding over each appellate court Explanation must be given of the cause of delay in disposing of appeals in suits of the Small Cause Court kind and for rent, entered in Part II, statement B, pending more than six weeks; and as regards "other cases," when the delay in disposing of them exceeds six months.

4. Statement C is intended to exhibit all miscellaneous cases instituted and disposed of by the various judicial courts in the district. All business heretofore entered in the statements under the head of "other miscellaneous proceedings," and which, for the most part, consists of reports, answers to, or orders upon, proceedings from other courts, applications from ministerial officers, &c., must be carefully excluded, and nothing but *real* cases, requiring a judicial finding and order, should be entered. Explanation of delay in disposing of cases pending more than six months must be given. Column 1, headed "class of courts,"

will, as in the other statements, contain the name and official designation of each judicial officer in the district, with the total quantity of miscellaneous work placed opposite his name. Part II, statement C, comprises appeals in miscellaneous cases, and the above remarks are *mutatis mutandis* applicable to the preparation of this statement.

5. These forms are so simple that the Court believe there will be no difficulty in their preparation, and they have been adopted by the Court with the view of giving as much relief as possible to the English department of the Judge's office.

QUARTERLY STATEMENT A.

ORIGINAL SUITS.

District of *Quarter of* 187

Court.	PENDING FROM THE LAST QUARTER.				SUITS RECEIVED			SUITS DISPOSED OF				PENDING.				EXPLANATIONS AND REMARKS.
	Small Cause Court.	Rent.	Other.	Total.	By institution.*	By transfer.	Total.	By transfer.	On trial. Contested cases should also be shown separately in foot-note.	Otherwise.	Total.	Small Cause Court.	Rent.	Other.	Total.	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
District Judge ...																
Additional Judge ..																
Subordinate Judge ...																
Total ...																

District Judge.

* Column 5, intended to show suits received by *institution*, will include cases received on *remand* from a higher court, or admitted to review, but such cases should be noted also in the column of remarks.—Circular Order, 1874, No. 2, January 26th.

† Under the head "on trial" should be included only contested cases. A foot-note should be added, showing how many cases have been contested; (*b*) how many cases have been disposed of *ex parte* on defendant's non-appearance (section 111); (*c*) how many cases have been disposed of on plaintiff's default (section 114). There is no trial where the parties are not at issue, and this is the case where the claim is admitted, or a compromise entered into. The following two classes of cases—(1) cases in which defendant admits plaintiff's claim, and (2) cases compromised (section 98, C. C. P.)—should *not* therefore be included under the category of cases "on trial." Cases disposed of *ex parte* or on default under sections 111 and 114 should be included in cases disposed of "otherwise."

Courts ought not to include in either of the heads "on trial" or "otherwise" cases in which the plaints have been rejected under sections 29, 31, 32, C. C. P., if the want of jurisdiction or other defect has been discovered before the defendant is summoned. A note of such cases should, however, be kept with a view to their being included in judicial statement 8, and the slight discrepancy which will thus arise can be reconciled by a note in the column of remarks.—Circular Memo. 1874, No. 10, May 5th.

Cases dismissed on default of plaintiff's prosecution of them, should be accounted for not as decided "on trial," but as "otherwise disposed of."

According to the Code of Civil Procedure, no doubt (this being a *casus omissus*) these decisions cannot come under the head of dismissal on default; but neither, manifestly, can they be said to be decisions on trial, where the plaintiff, having to prove a case, has given no evidence. The court's statements are meant to show work done, and ought not, by reason of an omission in the Code, to be made to supply misleading information.—G. L., 1876, No. 4, February 17th.

PART II.

Detail of Pending Cases.

Court.	Small Cause Court Class—Pending			Rent suits—Pending			Other Cases—Pending			Explanations and Remarks.
	More than 6 weeks.	More than 3 months.	More than 1 year.	More than 6 weeks.	More than 3 months.	More than 1 year.	More than 3 months.	More than 6 months.	More than 1 year.	
	1	2	3	4	5	6	7	8	9	10
District Judge										
Additional Judge ...										
Subordinate Judge ...										
Total ...										

District Judge.

B.

APPEALS.

District of *Quarter of* 187

Class of Courts.	SMALL CAUSE COURT CLASS.							RENT APPEALS.							OTHER APPEALS.							Explanations and Remarks.
	Remaining from last quarter.	Received of		Total.	Disposed of		Pending.	Remaining from last quarter.	Received		Total.	Disposed of		Pending.	Remaining from last quarter.	Received		Total.	Disposed of		Pending.	
		By institution.	By transfer.		By final order.	By transfer.			By institution.	By transfer.		By final order.	By transfer.			By institution.	By transfer.		By final order.	By transfer.		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
District Judge ...																						
Additional Judge ...																						
Subordinate Judge ...																						
Total ...																						

District Judge.

PART II.

Detail of Pending Appeals.

Class of Courts.	Small Cause Court Class—Pending			Rent appeals—Pending				Other appeals—Pending			Explanations and Remarks.
	More than 6 weeks.	More than 3 months.	More than 1 year.	More than 6 weeks.	More than 3 months.	More than 6 months.	More than 1 year.	More than 3 months.	More than 6 months.	More than 1 year.	
1	2	3	4	5	6	7	8	9	10	11	12
District Judge ...											
Additional Judge											
Subordinate Judge											
Total ...											

District Judge.

C—1.

Miscellaneous Original Cases.

District of *Quarter of* 187

Class of Courts.	Remaining from last quarter.	Received		Total.	Disposed of		Pending.	Of which pending				Explanations and Remarks.
		By institution.	By transfer.		By final order.	By transfer.		More than 6 weeks.	More than 3 months.	More than 6 months.	More than 1 year.	
1	2	3	4	5	6	7	8	9	10	11	12	13
District Judge												
Additional Judge ...												
bordinate Judge ...												
Total ...												

District Judge.

C—2.

Miscellaneous Appeals.

Class of Courts.	Remaining from last quarter.	Received		Total.	Disposed of		Pending.	Of which pending			Explanations and Remarks.
		By institution.	By transfer.		By final order.	By transfer.		More than 6 weeks.	More than 3 months.	More than 1 year.	
1	2	3	4	5	6	7	8	9	10	11	12
District Judge											
Additional Judge ..											
Subordinate Judge ..											
Total ...											

District Judge.

QUARTERLY STATEMENTS.

Only Printed Forms to be employed.

Statements are to be submitted in the printed forms to be procured from the Superintendent of Stationery.—(*C. O.*, 1874, *No.* 2, *January 26th, paragraph* 2.)

Explanations as to pending cases, delay, &c.

The submission of explanations regarding the cause of delay in disposing of civil suits and appeals is to be discontinued.

2. In future such explanations, when furnished by the inferior courts in a district, will be reviewed by the District Judge, in whom (subject to the superintendence of the High Court) the general control over all the civil courts in his district is by law vested.

3. The District Judge will append to the quarterly statements a certificate to the effect that he has carefully considered these explanations, and either that he has found them satisfactory, or that he has taken the needful steps in respect of those which have been found unsatisfactory.

4. Any case which appears to him to call for special notice will be separately brought to the notice of the Court; and wherever a case has been pending for more than a year, the circumstances are to be so reported.

5 The Court rely upon the earnest co-operation of the District Judges.—(*C. O.*, 1873, *No.* 6, *February 15th.*)

Courts, not Judicial Officers, to be separately distinguished.

These statements are mainly intended to exhibit the work of each court as a whole, and the work of individual officers should not be distinguished in the body of the returns.—(*C. O.*, 1871, *No.* 28, *October 12th, paragraph* 2.)

All District Judges and Judicial Commissioners are reminded that the quarterly statements of civil work (A, B, & C) are not intended to show the work of individual officers, but are merely returns of the state of business of the several *courts*, and officers names therefore need not be given.

2. The information will, however, continue to be collected by the Judges with a view to their yearly reports on the character, qualifications, and merits of their subordinates.—(*C. M.*, 1873, *No.* 12, *July 15th.*)

Transfers.

In the columns headed "instituted or received by transfer," as well as in those headed "disposed of by final order or transfer," the term *transfer* relates to those cases only which have passed from one court to another by an order of the presiding officer, and not to those

which have been left by the presiding officer to his successor in the same court when successive officers have presided in the same quarter. Cases of the latter description may be distinguished by a note in the column of remarks, where the number disposed of by each officer out of the total in each of the columns indicated ought also to be exhibited.—(*C.O.*, 1871, *No.* 28, *October* 12*th*, *paragraph* 2.)

In the quarterly statement A (original suits), column 5, intended to show suits *received* "by institution," will include cases received *on remand* from a higher court, or admitted to *review*; but such cases should be noticed also in the column of remarks.—(*C. O.*, 1874, *No.* 2, *January* 26*th*, *paragraph* 3.)

Transfers (*Orginal Suits, Appeals, Miscellaneous cases, Quarterly Statements A, B, C.*)

Whenever the columns showing cases *received* "by transfer" under each of the several classes differ from the corresponding columns for cases *disposed of* "by transfer," an explanation of the discrepancy should be given in the column of remarks.—(*C. O.*, 1874, *No.* 2, *January* 26*th*, *paragraph* 5.)

TRANSFERS—MODE OF RECKONING.

When a suit or miscellaneous case is transferred from one court to another, the date of the transfer by the one court shall be considered, for the purposes of the civil annual and quarterly returns, to be the date of its receipt by the other.—(*C. O.*, 1875, *No.* 10, *September* 7*th*.)

QUARTERLY STATEMENT B.—APPEALS.

When a case is remanded under section 351, Civil Procedure Code [for re-trial *de novo* by subordinate court], it is to be treated as *decided* by the appellate court, disappearing from its original file, and should be accounted for accordingly; but where an order is made under section 354 [requiring a return to the appellate court on certain specific points], the case ought not to be removed from the file of the appellate court, but shown as *pending*. When a case is received by the appellate court under an order of the High Court in special appeal, it will be shown as *received* "by transfer," and, after disposal, will be shown as *dispcsed of* either by "final order" or "by transfer," according as it has been dealt with under section 354, or remanded to the original court.—(*C. O.*, 1874, *No.* 2, *dated January* 26*th*, *paragraph* 5.)

Officers doing duty in more than one department.

District and Sessions Judges, and Magistrates of districts and other officers who have work in two departments to attend to, are requested, in submitting the periodical returns of each, to indicate the number of days of sitting, in that department or that side of their courts during the period to which the statements relate, accounting for the remaining time.—(*C. M.*, 1873, *No.* 3, *February* 28*th.*)

The attention of District Judges is again called to the necessity of showing in their quarterly returns the number of days they devoted to civil work during the period embraced by those returns, the Court having observed that the requirements of the above circular memorandum No. 3, dated 28th February last, have been very frequently overlooked.—(*C. M.*, 1873, *No.* 19, *November* 29*th.*)

Quarterly Return to District Judge from Subordinate Courts, showing commissions issued under Section 175, Civil Procedure Code.

Every subordinate court, including the mofussil Courts of Small Causes, shall furnish to the district court, at the close of each quarter, a return of the commissions which it has issued during such quarter in the form annexed: and the district court shall furnish a general return in the same form to the High Court.—(*C. O.*, 1873, *No.* 10, *May* 31*st*, *paragraph* 6.)

Statement of Commissions issued under Section 175, *Code of Civil Procedure, from the Court of District during the Quarter* 187 .

Consecutive number for the year.	Number of suit.	Party applying.	Date of application.	Place to which commission to be sent.	Person to whom addressed.	Fee.	Date of issue.	Date of return	Executed or not.	Remarks.
1	2	3	4	5	6	7	8	9	10	11

QUARTERLY RETURN OF APPLICATIONS UNDER SECTION 119, CIVIL PROCEDURE CODE, TO SET ASIDE JUDGMENTS *ex parte* OR IN DEFAULT.

C. O., 1875, *No.* 2, *January* 30*th.*

The returns to circular order No. 14, dated 13th June 1874, having shown that a large number of applications had been made to civil courts under section 119, Civil Procedure Code, and that in many cases the application was successful, there is reason to apprehend that suits are occasionally decided *ex parte* against a defendant without sufficient enquiry as to service of the summons, and that such result may be in some measure due to a feeling on the part of the presiding officer that any hardship may be obviated by an application under section 119. The Court are therefore pleased to direct particular attention to the subject, and to request that District Judges will have the goodness to satisfy themselves that the provisions of section 111 are carried out according to their true intent, *i.e.*, that the court in each case proceed to hear the case *ex parte* only on proof to its satisfaction that the summons has been duly served.

2. The Judges will require the Subordinate Judges and Moonsifs to report each quarter what number of applications have been made under the section, and how they have been disposed of; and this information will be embodied in the Annual Report, distinguishing between cases falling under section 111 [absence of defendant] and those under 114 [default by plaintiff].

3. It will be observed that the procedure of section 119 is not applicable to suits dismissed under section 110 [absence of both parties].

Form for quarterly returns by District Judge to High Court showing disbursements and receipts on account of process-serving peons within the district —(*C. O*, 1864, *No.* 10*A*, 26*th April, cancelled, except as to Small Cause Courts, by paragraph* 10 *of C. O.*, 1874, *No.* 31, *November* 4*th.*)

NOTE.—The corresponding return for Small Cause Courts to be submitted through District Judge.—*C. M.*, 1875, *No.* 6, *April* 8*th.*)

Designation of the several courts in the district.	Disbursement on account of the salaries of peons of each court during past quarter.	Receipts in each civil court in the district on account of tullubana fees.
1	2	3

Annual Report on the Administration of Civil Justice.

C. O., 1871, *No.* 4, *February 2nd.*

With regard to the form for the submission of the annual report, the following directions are now issued for the guidance of all Zillah Judges in supersession of previous orders on the same subject:—

This report on the administration of civil justice will present the main features of the year's administration under the heads, and in the tabular shapes following.—[*Comparative Tables I—IX, pages* 285—293].

Apposite observations as to increase or decrease of business, or the like, to accompany each table where necessary.

These tables to be followed by a report on the condition of the judicial buildings, the records of the several courts, the Judge's library, and the securities of those public officers from whom security is required.

The character, qualifications, and official merits of the several Subordinate Judges and principal ministerial officers to be made the subject of a separate report, in which the work done by, and the result of appeals from, such officers are to be analysed and commented upon only as aids to forming a judgment as to their respective deserts and fitness for promotion or continuance in the public service. This, however, is not to debar Zillah Judges from recording in their administration reports any instance of special and distinguished merit on the part of any of their subordinates which they consider deserving of conspicuous mention, and entitling the person indicated to the favorable notice of the Court or of Government.

COMPARATIVE TABLE I.—(ORIGINAL JURISDICTION).

PROGRESS IN INSTITUTIONS AND DISPOSALS OF REGULAR SUITS.

Table comparing the number of regular suits of all classes before the several Courts of Original Jurisdiction during the year, with the corresponding number in the year preceding.

Court.	Pending at the beginning of the year.			Instituted within the year. (Also admitted to review or received by transfer or remand; these to be also enumerated separately on foot-note.)			Disposed of within the year otherwise than by transfer* to other courts.			Disposed of within the year by transfer* to other courts.			Pending at the end of the year.		
	Year under review.	Year preceding.	Difference +or—for past year.	Year under review.	Year preceding.	Difference +or—for past year.	Year under review.	Year preceding.	Difference +or—for past year.	Year under review.	Year preceding.	Difference +or—for past year.	Year under review.	Year preceding.	Difference +or—for past year.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Total ...															

* *Note on* TRANSFERS.—For orders on this subject—(*Vide C. O. No.* 2 *of* 26*th January* 1874, *and No.* 10 *of* 7*th September* 1875.)

COMPARATIVE TABLE II.—(ORIGINAL JURISDICTION).

INSTITUTIONS CLASSIFIED.

Table classifying the regular suits brought before the several Courts of Original Jurisdiction within the year, and comparing the results for the past year with those for the year preceding.

N. B.—Includes institutions only. Excludes suits brought before the court by transfer. Excludes suits pending at beginning or close of the year.

Court.	Class I. Number of suits of the kind cognizable by Courts of Small Causes (see section 6, Act XI of 1865, and foot-note to this table).			Class II. Number of suits for rent, and other suits under the Rent Law.			Class III. Number of suits for title to land, &c., and all suits other than those of classes I and II.			Total number for the three classes. (Figures to tally with those of columns 5, 6, 7 of comparative Table I.)			Remarks.
	Past year.	Preceding year.	Difference +or—for past year.	Past year.	Preceding year.	Difference +or—for past year.	Past year.	Preceding year.	Difference +or—for past year.	Past year.	Preceding year.	Difference +or—for past year.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Total ...													

Note—On the principles of classification.—Class I.—Suits of the kind cognizable by Courts of Small Causes will comprise all suits whatsoever without reference to limit of value or jurisdiction which fall within any of the following nine sub-classes of suits:—

1. On written obligation.
2. On unwritten obligation.
3. On account stated.
4. For money had and received.
5. For value of goods sold.
6. For breach of contract not comprised within the preceding five sub-classes.
7. For house-rent or other rent—claims not cognizable by the Rent Law.
8. For moveable property or value thereof.
9. For damages.

For the corresponding sub-classes for rent suits and title suits—See pages 261-262.

COMPARATIVE TABLE III.

INSTITUTIONS VALUED (ORIGINAL).

Table showing the values of the several classes of regular suits brought before the several Courts of Original Jurisdiction within the past year, and comparing these with the results of the year preceding.

N.B.—Includes suits brought before the court by transfer; excludes suits pending at beginning or close of the year.

Court.	Class I. Total value of the suits of the kind cognizable by Courts of Small Causes (*see* section 6, Act XI of 1865, and foot-note to Table II).			Class II. Total value of the suits for rent, and other suits under the Rent Law.			Class III. Total value of the suits for title to land, and all suits other than those of classes I and II.			Total value for the three classes.			Remarks.
	Past year.	Preceding year.	Difference + or — for past year.	Past year.	Preceding year.	Difference + or — for past year.	Past year.	Preceding year.	Difference + or — for past year.	Past year.	Preceding year.	Difference + or — for past year.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Total ...													

Note.—Fractions of a rupee to be omitted.

COMPARATIVE TABLE IV.—(ORIGINAL JURISDICTION).

MISCELLANEOUS CASES.

Table showing miscellaneous cases of a Judicial nature (that is, all cases inter partes *other than regular suits or proceedings in execution), and comparing the results for the past year with those for the preceding year (Courts of Original Jurisdiction). Paragraph 7 of Circular Order No. 2, 1874, January 26th.*

Court.	Pending at the beginning of the year.			Instituted within the year. (Also those admitted to review or received by transfer on remand; these to be also enumerated separately in foot-note.)			Disposed of within the year otherwise than by transfer to other courts.			Disposed of within the year by transfer to other courts.			Pending at the close of the year.		
	Past year.	Preceding year.	Difference + or— for past year.	Past year.	Preceding year.	Difference + or— for past year.	Past year.	Preceding year.	Difference + or— for past year.	Past year.	Preceding year.	Difference + or— for past year.	Past year.	Preceding year.	Difference + or— for past year.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Total ...															

COMPARATIVE TABLE V.—(ORIGINAL JURISDICTION).

PROGRESS IN DECREE EXECUTION.

Table comparing the progress in the execution of Decrees within the past year and that preceding.

Court.	NUMBER OF DECREES EXECUTED						AMOUNT REALISED.		
	COMPLETELY.			PARTIALLY.					
	Past year.	Preceding year.	Difference + or — for past year.	Past year.	Preceding year.	Difference + or — for past year.	Past year.	Preceding year.	Difference + or — for past year.
1	2	3	4	5	6	7	8	9	10
Total ...									

COMPARATIVE TABLE VI.—(APPELLATE JURISDICTION.)

PROGRESS IN INSTITUTIONS AND DISPOSALS OF REGULAR APPEALS.

Table comparing the number of Regular Appeals from decisions in suits of all classes during the past year, and that during the year immediately preceding.

Court.	Pending at the beginning of the year.			Instituted within the year. (Also those admitted to review or received by transfer or remand; these to be also separately enumerated in foot-note.)			Disposed of within the year otherwise than by transfer.			Disposed of by transfer to other courts.			Pending at the end of the year.		
	Past year.	Preceding year.	Difference +or—for past year.	Past year.	Preceding year.	Difference +or—for past year.	Past year.	Preceding year.	Difference +or—for past year.	Past year.	Preceding year.	Difference +or—for past year.	Past year.	Preceding year.	Difference +or—for past year.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Total ..															

COMPARATIVE TABLE VII.—(APPELLATE JURISDICTION.)

INSTITUTIONS CLASSIFIED.

Table classifying such appeals from decisions upon regular suits as have been brought before the several Courts of Appellate Jurisdiction within the year, and comparing these with the results for the year preceding.

N.B.—Includes appeals brought before the court by transfer; excludes appeals pending at beginning or close of the year. The totals in columns 11, 12, 13 of this table are to tally with those in columns 5, 6, 7 of comparative table VI.

Court.	Class I. Number of appeals from decisions in suits of the kind cognizable by Courts of Small Causes.			Class II. Number of appeals from decisions in suits for rent, and other suits under the Rent Law.			Class III. Number of appeals from decisions in suits for title to land and all suits other than in classes I and II.			Total for the three classes.			Remarks.
	Past year.	Preceding year.	Difference +or—for past year.	Past year.	Preceding year.	Difference +or—for past year.	Past year.	Preceding year.	Difference +or—for past year.	Past year.	Preceding year.	Difference +or—for past year.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Total ...													

COMPARATIVE TABLE VIII.—(APPELLATE JURISDICTION.)

INSTITUTIONS VALUED.

Table showing the values of such appeals from decisions in the several classes of regular suits as have been brought before the various Appellate Courts within the past year and comparing these with the results of the year preceding.

N. B.—Includes appeals brought before the appellate courts by transfer; excludes suits pending at beginning or close of the year.

Court.	Class I. Total value of the appeals in suits of the kind cognizable by Courts of Small Causes.			Class II. Total value of the appeals in suits for rent, and in other suits under the Rent Law.			Class III. Total value of the appeals in suits for title to land and in all suits other than those of classes I and II.			Total value for all three classes.			Remarks.
	Past year.	Preceding year.	Difference + or — for past year	Past year.	Preceding year.	Difference + or — for past year.	Past year.	Preceding year.	Difference + or — for past year.	Past year.	Preceding year.	Difference + or — for past year.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14
Total ...													

Note.—Fractions of a rupee to be omitted.

COMPARATIVE TABLE IX.—(APPELLATE JURISDICTION.)

MISCELLANEOUS CASES.

Table showing all miscellaneous appeals, i.e., all appeals, other than those from decisions in regular suits, and comparing the results for the past year with those for the preceding year.

Court.	Pending at the beginning of the year.			Instituted within the year. (Also those admitted to review or received by transfer or remand; these to be also separately enumerated in foot-note.)			Disposed of within the year otherwise than by transfer to other courts.			Disposed of within the year by transfer to other courts.			Pending at the close of the year.		
	Past year.	Preceding year.	Difference +or—for past year.	Past year.	Preceding year.	Difference +or—for past year	Past year.	Preceding year.	Difference +or—for past year.	Past year.	Preceding year.	Difference +or—for past year.	Past year.	Preceding year.	Difference +or—for past year.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Total ...															

Time for submitting Annual Reports on administration of Civil and Criminal Justice.

C. O., 1850, *No* 107, *November 25th.*

Considerable delay having occurred in past years in the receipt of some of the annual zillah statements and reports on the administration of civil and criminal justice, the attention of Civil and Sessions Judges is now specially called to the subject, with a view to prevent similar delay at the close of the current year.

2. The Court are aware that the delay generally arises from the fact that the statements are often not received from the subordinate authorities, so as to admit of their being submitted within the time prescribed; or that they arrive in an imperfect state, and it is found necessary to return them for correction.

3 Judges are requested therefore to call the attention of their subordinates to the subject, and to direct them to commence the preparation and revision of their statements in December, so as to have them as far advanced as possible before the end of the year. The addition of the December returns to them will then be a work of comparatively little trouble, and their reports may be completed and sent in by the 15th of January, so as to enable Civil and Sessions Judges to submit their own by the [15th*] of February.

4. They will also impress on their subordinates the necessity of careful revision of the statements in order to ensure their correctness, and to avoid the necessity of their being returned; and will point out to them that the Court consider the punctual despatch of correct statements an important duty, the neglect of which will not be overlooked by the Court in the comparative estimate of their qualities as public officers.

5. Judges will consider these directions equally applicable to their own office, and will hold in mind that the utility of periodical reports is seriously impaired and often entirely destroyed by delay in the receipt of them.

Annual Statements accompanying Annual Report.

C. O., 1870, *No.* 32, *November 8th, Civil and Criminal.*

In supersession of previous orders on the subject of annual statements, the High Court of Judicature hereby direct that the undermentioned statements shall be submitted in accordance with the instructions following: Under the orders of Government, the Collectors will furnish the several Zillah Judges with the particulars required to complete those parts of the returns which relate to revenue courts and revenue cases.

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* C. O., 1875, No. 4, May 20th.

2. This statement is to be furnished by the Judge from the information in his own office and that which he will obtain from the several courts—civil, revenue, and criminal. From the returns received from the several districts under the authority of the Court, a collective statement will be prepared by the Court for transmission to the Government. This is a new statement, and absolute completeness in preparing it is not in the first instance to be expected. Attention is directed to clauses (*a*) and (*b*) of the Government resolution given in the margin, and this return is to be forwarded as soon as it can be prepared without delaying, for this purpose, the other statements now ordered, which do not differ very widely from those previously in use.

(*a*). All heads of departments are to fill up and supply the detailed tables proposed by the Committee, *only* so far as the entries can be compiled from the materials which have been collected for the more concise tables which have been hitherto supplied with the Administration Reports or Annual Reports of each department. No information which is not already in the offices is to be sought for.

(*b*). They are to throw into the shape required by the new statistical tables all such items and the entries in such columns as can be reliably compiled from the registers and details which have already been kept up and only these.

B. 1.
Annual.
Showing the various judicial tribunals, original and appellate.

3. This statement is likewise to be submitted annually by the Zillah Judge, who will receive it from the Magistrate of the district. It will comprise all cases in whatever criminal court they may have been disposed of, one figure showing the cases of each kind which have been before *all the courts* of the district. Accused persons who have been committed for trial, but whose cases have not been disposed of by the court of session, will be entered as "under trial."

B. 2.
Statement of offences reported, and of persons tried, convicted, and acquitted for each offence in the district of in the year 18 .

4. This statement, *annual*, will be prepared in the office of the Magistrate of the district on data furnished to him by his subordinates; it will then be forwarded by him to the Zillah Judge, who will add the figures for his own court and transmit it to the High Court, where a complete statement for the whole of the territories under the Court's jurisdiction will be prepared.

B. 3.
Statement showing the general result of criminal trials in the tribunals of various classes in the district of in the year 18 .

5. This return will be furnished *annually* in the same manner as the last preceding, and will require careful attention.

B. 4.
Statement showing the punishments inflicted by various criminal tribunals in the district of in the year 18 .

6. This statement will be submitted annually by the Zillah Judge, who will first receive from the Magistrate of the district the return of his own court.

B. 5.
Showing the result of appeal and revision in criminal cases in the district of in the year 18 .

7. This will be an annual statement. It will be compiled in the office of the Zillah Judge from the materials furnished to him by the officers presiding in the several courts (within his district) which are comprised in the statement. The several denominations of cases are to be entered where such cases occur, as given in the accompanying list (*a*), and in that order.

(*a*). Suits for money, distinguishing suits up to Rs. 500, cognizable by Small Cause Courts, from "other cases."
Suits under the Rent Law.
Other suits.

B. 6.
Showing the number and description of civil suits instituted in the civil and the revenue courts of the district of in the year 18 .

In judicial statement No. 6, the *total* number of suits instituted in each class of courts should be shewn in a column to be inserted at the end of the columns of figures, the *grand total* of all the above totals being shewn at foot; and wherever the total under any head in the new column differs from the total under the corresponding head in statement No. 8, the cause of the discrepancy should be explained in the column of remarks in statement No. 6.—(*C. M.*, 1876, *No. A*, *January* 12*th.*)

B. 7.
Showing value of suits disposed of in the civil and revenue courts of the district of in the year 18

8. This statement will in like manner be prepared annually in the office of the Zillah Judge.

B. 8.
Showing the general result of the trial of civil suits in the courts of original jurisdiction of the district of in the year 18

9. This will be an annual return.

In statement No. 8, the work of those Moonsifs who have been invested with Small Cause Court powers under section 29, Act VI of 1871, performed in the exercise of those powers, should be shewn separately from their work as Moonsifs, both kinds of cases being exhibited opposite "paid sub-divisional tribunals" and bracketed together.

To enable the Court to have columns 19 and 20 filled up, it is not enough that each local return exhibits the average duration of cases under each class of courts. What is wanted for the Court's return to the Government of India is a general average for each grade of courts in all districts, and to effect this it is necessary to have from each district the *actual* number of days occupied in the trial of cases, from date of institution to date of disposal, and the actual number of cases disposed of. This information should be given separately under each head "contested" and "uncontested."—(*C. M.*, 1876, *No. A*, *January* 12*th.*)

B. 9.
Showing the business of the civil and revenue appellate courts of the district of in the year 18

10. This statement of appellate business, prepared in the same manner, will be annual.

11. In regard to these two statements (8 and 9), the Zillah Judge will take care that the proper officer of his court, as well as the subordinate courts, collect at convenient intervals the information requisite for completing these statements at the end of each year, although quarterly detailed statements of a corresponding kind are not now required.

B. 10.
Annual.
Shows the execution of the decrees of the civil and revenue courts of the district of in the year 18

12. This statement, which comprehends the execution of decrees in all the courts of the district, will be completed in the office of the Zillah Judge. The cases to be entered in the 6th column will include those in which the execution proceedings have been "struck off the file," or have come to an end for the time being, although complete execution has not been obtained.

It was intended by paragraph 12 that the column "decrees partially executed" should contain the cases in which execution was not complete, but was also not pending. It was meant to include both those in which there had been partial execution, and those in which no execution had resulted, though the proceedings had come to an end for the time being. (*C O*, 1872, *No.* 5, *February 6th.*)

13. This statement will be compiled under the direction of the Zillah Judges from the records in his office. It will usually be a blank, except in regard to the court of session, and the penultimate column may be filed by reference to the orders of the local Government in this particular.

B 11
Showing use of juries and assessors in the civil and criminal courts of

14. In publishing these forms, the Court desire to impress it upon the Zillah Judges and other officers concerned in the preparation of them, that returns of this kind, unless they are correct and framed in exact compliance with instructions, are not merely valueless, but mischievous. It will be expected therefore that pains will be taken to render returns as correct as possible

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Classification and Designation of Courts.

C. M., 1874, *No.* 1, *January 24th.*

The annexed revised list of headings is circulated for the guidance of all civil and criminal courts subject to the control of the High Court, to be adopted in the preparation of judicial statement (annual) B 1 from and after 1st January 1873, when Act X of 1872 came into operation :—

List of Headings

Magistrates of the third class, exercising criminal powers only { Paid / Unpaid
Ditto ditto ditto criminal and civil powers
Ditto ditto ditto criminal and revenue powers
Ditto ditto ditto criminal, civil, and revenue powers.
Magistrates of the second class, exercising criminal powers only
Ditto ditto ditto criminal and civil powers
Ditto ditto ditto criminal and revenue powers
Ditto ditto ditto criminal, civil, and revenue powers.
Benches of Magistrates
Magistrates of the first class, exercising only criminal powers
Ditto ditto ditto also revenue powers
Ditto ditto ditto also revenue and civil powers
Magistrates of districts, exercising only criminal powers.
Ditto ditto ditto also revenue powers
Ditto ditto ditto also revenue and civil powers
Magistrates exercising the powers described by section 36, Act X of 1872
Courts of Session
Moonsiffs exercising only civil powers.
Ditto ditto also revenue powers
Ditto ditto also criminal powers
Ditto ditto also revenue and criminal powers
Small Cause Courts exercising no other functions
Judges of Small Cause Courts exercising also ordinary civil (or revenue) powers.
Ditto ditto ditto criminal or revenue as well as civil powers.
Subordinate Judges without other functions
Ditto ditto exercising jurisdiction of Small Cause Court Judge
District Judges
Judicial Commissioners with powers of District Judges

B.

JUDICIAL STATEMENTS—1.

Showing the various judicial tribunals, original and appellate, existing in the district of *on the last day of the year.*

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
CLASS OF TRIBUNALS, DISTINGUISHING THOSE WHICH EXERCISE POWERS IN ONE DEPARTMENT FROM THOSE EXERCISING POWERS IN TWO OR THREE DEPARTMENTS, AND THOSE CONSISTING OF PAID FROM UNPAID JUDGES. (*For list of headings see Circular Memo. No. 2, of 26th February 1873.*)	No. of Judicial divisions.	Average area of each division in square miles.	Average population of each division.	No. of tribunals.	Constitution of tribunals stating number of Judges in each, and Jury or Assessors, if any.	Judicial powers of each tribunal, original and appellate.	Prescribed qualification of Judges previous to appointment.	Total number of Judges. European. Covenanted.	Total number of Judges. European. Commissioned Military Officers.	Total number of Judges. European. Uncovenanted.	Total number of Judges. Native.	Average Annual salary of each paid Judge. European.	Average Annual salary of each paid Judge. Native.	Total cost of tribunals.	Net receipts from stamps.	Executive or other functions exercised by the same officers.	Average number of days in the year devoted to judicial work.	Average number of advocates attached to each tribunal.	No. of Cases decided during the year. Criminal.	No. of Cases decided during the year. Civil.	No. of Cases decided during the year. Revenue.	No. of Cases decided during the year. Appeal.
Designation of Courts, &c. (C. M. 1874. No. 1, January 24th.)																						

JUDICIAL STATEMENTS—6—(CIVIL).

Statement showing the Number and Description of Civil Suits Instituted in the Civil Courts of in the District of in the year 187

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
	SUITS FOR MONEY, DISTINGUISHING SUITS UP TO Rs. 500, COGNIZABLE BY SMALL CAUSE COURTS FROM OTHER "CASES."																	
	On written obligation.		On unwritten obligation.		On account stated.		Money had and received.		Goods sold.		Breach of contract not mentioned above.		Rent not falling under the Rent Law.		Moveable property or value thereof		Damages.	
CLASS OF TRIBUNALS.	Rs. 500 and under.	Above Rs. 500.	Rs. 500 and under.	Above Rs. 500.	Rs. 500 and under.	Above Rs. 500.	Rs. 500 and under.	Above Rs. 500.	Rs. 500 and under.	Above Rs. 500.	Rs. 500 and under.	Above Rs. 500.	Rs. 500 and under.	Above Rs. 500.	Rs. 500 and under.	Above Rs. 500.	Rs. 500 and under.	Above Rs. 500.

JUDICIAL STATEMENTS—6—(CIVIL).—(*Continued*).

Class of Tribunals.	Arrears of rent with or without ejectment or cancelment of lease. 20	Enhancement or abatement of rent. 21	Suits under the Rent Law.	Relating to disturbnt. 22	Damages for extortion, or withholding receipts, or on account of illegal restraint or other cause. 23	For pottahs or kuboolents. 24	For ejectment or recovery of possession. 25	For recovery of money or accounts from agents. 26	All other suits under the Rent Law not included above. 27	Suits for immoveable property. 28	Suits for specific performance of contract. 29	Suits to declare and establish rights to real property, including pre-emption, foreclosure, &c. 30	Suits to declare and establish personal rights. 31	Other Suits.	Suits for an account. 32	Suits relating to religious endowments. 33	Suits to set aside Judgments, contracts, or obligations on the ground of fraud. 34	Suits for dissolution of marriage. 35	Suits for enforcement of matrimonial rights. 36	Suits for partition. 37	Suits relating to shipping. 38	Suits relating to religion and caste. 39	Remarks. 40

JUDICIAL STATEMENTS—7—(CIVIL.)

Statement showing value of suits disposed of in the Civil and Revenue Courts of the district of in the year 187 .

1	2	3	4	5	6	7	8
Value of Suits.	Number of Suits disposed of in different Courts.					Total value of suits.	Remarks.
	Village Courts.	Small Cause Courts.	Moonsiffs,' Deputy Collectors', and other Sub-Divisional Courts.	District Courts.	Superior Courts.		
In Civil Courts.							
Rs.							
Not exceeding ... 5							
„ „ ... 20							
„ „ ... 100							
„ „ ... 500							
„ „ ... 1,000							
„ „ ... 5,000							
„ „ ... 10,000							
„ „ ... 1,00,000							
Exceeding 1,00.000							
Total ...							
In Revenue Courts.							
Rs.							
Not exceeding ... 5							
„ „ ... 20							
„ „ ... 100							
„ „ ... 500							
„ „ ... 1,000							
„ „ ... 5,000							
„ „ ... 10,000							
„ „ ... 1,00,000							
Exceeding 1,00.000							
Total in Revenue Courts ...							
Grand Total ...							

JUDICIAL STATEMENTS—8—(CIVIL.)

Statement showing the General Result of the trial of Civil Suits in the Courts of Original Jurisdiction in the Province of in the year 187 .

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
CLASS OF COURTS.	Suits remaining from last year.	Instituted in	Received by transfer.	Total for disposal.	Transferred to other courts.	Plaint rejected or returned.	Dismissed for default.	Withdrawn with leave.	Compromised.	Decreed on confession.	Decreed *ex parte*.	Dismissed *ex parte*.	CONTESTED. Judgment for plaintiff in whole or part.	CONTESTED. Judgment for defendant.	Total disposed of.	Pending.	Over 2 months.	Over 4 months.	AVERAGE DURATION OF SUITS. Contested.	AVERAGE DURATION OF SUITS. Uncontested.	Referred to arbitration.	REMARKS.
Village Courts																						
Small Cause Courts																						
Unpaid Local Tribunals																						
Paid Sub-Divisional Tribunals																						
District Courts other than Chief Courts of Districts																						
Chief Courts of Districts																						
Superior Courts of General Jurisdiction ...																						
Superior Courts of Special Jurisdiction ... ... Admiralty																						
Testamentary ...																						
Matrimonial																						
Insolvent																						
Total ...																						
REVENUE COURTS.																						
Unpaid Local Tribunals																						
Paid Sub-Divisional Tribunals																						
Courts of Collectors																						
Total ...																						
Grand Total ...																						

JUDICIAL STATEMENTS—9—(CIVIL.)

Statement showing the business of the Civil and Revenue Appellate Courts of the Province of in the year 187 .

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
							Heard ex parte.			Contested.									
Class of Court.	Remaining.	Instituted.	Received by transfer.	Total.	Transferred.	Dismissed for default, or under sections 5 and 6, Act XXIII of 1861.	Confirmed.	Modified.	Reversed.	Confirmed.	Modified.	Reversed.	Remanded.	Total disposed of.	Pending.	Over four months.	Objections under section 348, Act VIII, 1859.	Objections allowed.	Remarks.
Civil Appellate Court other than Chief Court of District																			
Collector's Appellate Court																			
Chief Appellate Court of district ... Civil Appeals																			
Chief Appellate Court of district ... Revenue Appeals ...																			
Superior Appellate Courts other than Chief Court of Province, each class of Courts being specified																			
Chief Court of Province ... Regular Appeal from Judge or Bench in Original Jurisdiction																			
Chief Court of Province ... From District Courts.																			
Chief Court of Province ... Special Appeals ...																			
Total ...																			

JUDICIAL STATEMENTS—10—(CIVIL.)

Statement showing the execution of the decrees of the Civil and Revenue Courts of the Province of in the year 187 .

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Class of Courts.	Applications to Execute Decrees.				Decrees completely executed.	Decrees partially executed.	Pending at the end of	Decrees executed by possession being given.	Nature and Number of Coercive Processes Issued.						Remarks.
	Pending.	Filed.	Received by transfer.	Total.					Imprisonment of person.	Moveable property.		Immoveable property.		Orders under section 283, Code of Civil Procedure.	
										Attached.	Sold.	Attached.	Sold.		

ANNUAL STATEMENT No. 7—(CIVIL.)

General result of Appeals as to the number and proportion of decisions severally affirmed, modified, remanded, and reversed on appeal in respect of the several Courts appealed from. Proportion of reversals, &c., to confirmations.

N.B.—Separate statements for the several classes of cases—I, Small Cause Court cases; II, Rent Suits; III, Title and other suits not falling within I, II.

Appeals from decisions of	Appeals preferred.	Ratio of appeals to decision.	Number of decisions affirmed.	Ratio of affirmed to decided.
1	2	3	4	5

Average Duration of Cases.

C. O., 1870, *No.* 6, *March 9th, temporarily discontinued, revived by C. O.*, 1873, *No.* 24, *November 25th.*

With a view to computing the average duration of suits in all civil courts upon a system at once uniform and more accurate than that which generally prevails at present, the Court are pleased to lay down the following rules which are to be strictly adhered to by all judicial officers.

2. The average duration of cases disposed of by a single decision of the court of first instance will be thus computed, separate calculations being made of cases of the small cause class and of cases not of that class, as indicated in the accompanying statement "average duration of suits" which, together with statement "average duration of appeals," explained hereafter, is to be substituted for the annual statement heretofore submitted (No. 6) of the average duration of suits. The total number of days during which all cases finally disposed of during the year under report have been pending will be divided by the total number of cases so decided, the result being the average duration of those cases.

3. Cases in which application for review of judgment is made, or cases which are remanded by the appellate court, will be shewn under the proper headings in the statements, and the average duration of those proceedings will be thus calculated. In the case of reviews, the total number of days from date of application to date of finally disposing of the case, whether the review shall have been granted or refused, shall be divided by the total number of suits in which such application has been made.

4. The average duration of cases under remand must be separately exhibited by a similar process, reckoning from the date of order of remand to the date of the new decision under such order in each case. This rule will apply to courts of appellate as well as of original jurisdiction.

5. When in the same case there has been an application for review, and also an order of remand, of course the case will appear in each of the columns assigned to those subjects.

6. When an order has been made under section 354 or section 355, Code of Civil Procedure, the case is of course to be treated as being in appeal, and the time occupied in making the return called for, or in taking the evidence, must be counted as time occupied in the appeal.

7. The statements will thus exhibit the average duration of suits—

1*st.*—Originally decided.
2*nd.*—Brought on by way of review.
3*rd.*—Before the 1st court on remand.

Appeals will be exhibited in the same way in a separate statement, which is to be prepared according to the accompanying form. It will not be necessary under the present orders to combine these

figures for the purpose of showing a result made up of the average duration of all cases, whether appealed or not.

8. Statement No. 6, which has hitherto been in use, shows the average duration of suits in the year under report, and for the four years immediately preceding it. In the statements now prescribed, it has been thought sufficient to embrace a period of three years, *i.e.*, the year under report and the two preceding years. As, however, the system now introduced is in many respects entirely new, it will not be necessary, in submitting the statements for 1869, to show more than the average duration of suits during that year, as it would be obviously useless for the purpose of comparison to exhibit cases, the average duration of which had been calculated on different principles.

9. The Court request that Judges and Judicial Commissioners will use their utmost endeavours to submit the statements herein prescribed for the past year within one month from the date of the receipt of this circular order, in order that the Court's resolutions on the administration of civil justice in the various districts in its jurisdiction may not be unnecessarily delayed.

In supersession of such portion of circular order No. 32, dated 8th November 1870, as declares the statements named on the margin* to be no longer necessary, the Court is pleased to direct the preparation of those statements for the year 1873, and for future years, in accordance with the instructions contained in circular order No. 6, dated 9th March 1870, which should be carefully observed.

*6 and 6A, Statement showing the average duration of suits and appeals.

Those instructions should also guide the local courts in filling up columns 19 and 20 of judicial statement No. 8 (circular order No. 32, dated 8th November 1870), which provide for the exhibition of the average duration of suits contested and uncontested.

The Court desire also that, in calculating the duration of cases, whether original suits or appeals, the reckoning be made from the date of institution, and not from that of transfer.—(*C. O.*, 1873, *No.* 24, *November 25th.*)

BENGAL SECRETARIAT LIBRARY.

ANNUAL STATEMENT 8.

Average duration of Suits.

1	2						3						4						5
In the Court of	Duration of single or first trials, *i.e.*, of cases disposed of by a single judgment of the court of first instance.						Duration of cases in which review of judgment has been applied for.						Duration of cases remanded under section 351.						Remarks.
	187 .		187 .		187 .		187 .		187 .		187 .		187 .		187 .		187 .		
	Months.	Days.	Months.	Days.	Months.	Days.	Months.	Days.	Months.	Days.	Months.	Days.	Months.	Days.	Months.	Days.	Months.	Days.	
Judge ... ... {S. C. Court class ... ... / Other cases																			In entering in columns 2, 3, and 4 the average duration of the cases to be shown therein, fractions of days are to be omitted.
Additional Judge ... ... {S. C. Court class... ... ... / Other cases																			
Subordinate Judge ... ... {S. C. Court class... ... ... / Other cases																			
Additional Subordinate Judge {S. C. Court class ... ... / Other cases																			
Judge of S. C. Court with powers of Subordinate Judge ... ... } Other cases																			
Moonsif of ... ... {S. C. Court class... ... ... / Other cases																			

Average duration of Appeals.

1	2						3						4						5
In the Court of	Duration of appeals finally disposed of by decree of first appellate court.						Duration of appeals in which reviews have been applied for subsequently to decree of appellate court.						Duration of appeals remanded under section 351, Act VIII of 1859.						Remarks.
	187 .		187 .		187 .		187 .		187 .		187 .		187 .		187 .		187 .		
	Months.	Days.	Months.	Days.	Months.	Days.	Months.	Days.	Months.	Days.	Months.	Days.	Months.	Days.	Months.	Days.	Months.	Days.	
Judge ... ... {S. C. Court class ... {Other cases																			Fractions of days to be omitted, as directed in Statement No. 8.
Additional Judge ... ... {S. C. Court class ... {Other cases																			
Subordinate Judge ... ... {S. C. Court class ... {Other cases																			
Additional Subordinate Judge ... ... {S. C. Court class ... {Other cases																			
Judge of S. C. Court with powers of Subordinate Judge .. .. .. Other cases																			

Transfers of cases from one Court to another.

Reckoning of date of transfer.

When a suit or miscellaneous case is transferred from one court to another, the date of the transfer by the one court shall be considered, for the purposes of the civil annual and quarterly returns, to be the date of its receipt by the other.—(*C. O*, 1874, *No.* 2, *January* 26*th.*)

Whenever the columns showing cases *received* "by transfer" under each of the several classes differ from the corresponding columns for cases *disposed of* "by transfer," an explanation of the discrepancy should be given in the column of remarks.—(*C. O.*, 1875, *No.* 10, *September* 7*th.*)

The Court is pleased to direct that, in the preparation of judicial statements (annual) Nos. 8 and 9, prescribed by circular order No. 32, dated 8th November 1870, cases in course of transfer, when the year closes, shall be shown in the returns for that year as pending in the court to which they have been transferred. The Court expect accordingly that, in the returns for 1873, all cases transferred on or before 31st December will be accounted for by the courts to which they belong in consequence of such transfer.—(*C. M.*, 1874, *No.* 7, *March* 6*th.*)

Annual returns showing (1) applications under Section 119, Civil Procedure Code; (2) decrees satisfied without execution; (3) statistics as to local enquiries.

C. O., 1874, *No.* 14, *June* 13*th.*

The following special returns are prescribed in addition to the regular annual statements, and it is requested that they may be made in the forms appended hereto:—

A statement showing for each court in the district the applications filed during the year under section 119, Civil Procedure Code, for orders to set aside judgments passed *ex parte* or on default.

A return of decrees satisfied without execution for each court subordinate to the High Court.

A statement showing on a graduated scale the values of suits in which local inquiry was ordered, and the expenditure of money and time involved therein.

A.

Applications under Section 119, *Act VIII of* 1859, *for an order to set aside an* ex parte *Judgment or a Judgment on default.*

Name of court.	To set aside *ex parte* judgment	To set aside judgment on default.	Total.	Applications granted	Applications rejected	Total disposed of	Pending.	Remarks
1	2	3	4	5	6	7	8	9

B.

Statement showing Decrees satisfied without execution in during the year

Denomination of court.	Number of decrees satisfied.	Amount of decree.	REMARKS.
1	2	3	4

C.

Statement showing Values of the different classes of suits in which local inquiry was ordered during the year

Scale of values.	No.	Aggregate value.	Average value.	Aggregate cost of local inquiry only.	Average cost of local inquiry.	Average time occupied in inquiry.
1	2	3	4	5	6	7
Cases not exceeding Rs. 5						
„ 20						
„ 50						
„ 100						
„ 500						
„ 1,000						
Exceeding 1,000						

ANNUAL STATEMENT OF SALES OF LAND, &c.

All District Judges and Judicial Commissioners are hereby requested to obtain from their own offices, as well as from the courts subject to their control, the particulars set forth in the annexed form regarding compulsory sales of immoveable property not conducted by the agency of the Collector, and submit the same to the High Court for the information of Government. The return in question should embrace the official year 1872-73, and should be similarly submitted in future years.

2. By the words "Great Zemindarees," in the first column of the form, are intended *zemindarees paying more than*

Rs. 50,000 *revenue*, and by "Large Zemindarees," *those paying more than Rs.* 5,000 *revenue.*—(*C. M.*, 1873, *No.* 18, *November* 10*th.*)

Register of transfers by compulsory sale.

Nature of tenure transferred.	Number of transfers recorded.	Average area in acres of each holding transferred.	Remarks.
1	2	3	4
Great zemindarees, complete			
Shares in zemindarees, complete			
Large zemindarees			
Shares in ditto			
Small zemindarees			
Shares in ditto			
Villages owned by cultivating communities..			
Shares in ditto			
Holdings of proprietary cultivators			
Intermediate holdings of a transferable character			
Holdings of ryots at fixed rates			
Holdings of ryots with right of occupancy .			
Revenue-free tenures			

Annual Return of duty levied on Probates, Letters of Administration, Certificates of Administration, Certificates of Representation, &c.

C. O., 1871, *No.* 20, *July* 13*th, and C. M.*, 1872, *No.* 11, *June* 3*rd.*

At the instance of His Excellency the Governor-General in Council, the High Court requests all District Judges and Judicial Commissioners to submit to this office, in the form appended hereto, returns of duty levied on probates and letters of administration granted under Part XXXI of Act X of 1865, and certificates issued under Act XXVII of 1860.

2. The statistical information required for these returns should be preserved, in registers opened for that purpose, from the 1st July 1871, and the first return should embrace the six months ending with December of the current year. Subsequent returns should be annual.

Probates and Letters of Administration and Certificates issued in the District of

Declared value of assets of estate.	Number of probates or letters of administration with will annexed.	Amount of court fees paid.	Number of letters of administration without will annexed.	Amount of court fees paid.	Number of certificates under Act XXVII of 1860.	Amount of court fees paid.	Total		Number of letters of administration cancelled, and fresh letters issued in lieu of the original.	Remarks.
							Number of probates, letters, and certificates.	Amount of court fees paid.		
1	2	3	4	5	6	7	8	9	10	11
Above Rs. 1,000 up to Rs. 5,000 ...										
„ „ 5,000 „ „ „ 10,000 .										
„ „ 10,000 „ „ „ 50,000 ...										
„ „ 50,000 „ „ „ 1,00,000 ...										
„ „ 100,000										

It will not be necessary to include in the annual return in question any probates, letters, or certificates: where the amount or value of the property does not exceed Rs. 1,000, no fee being chargeable in such cases.—*See* clause 8, section 19, Court Fees Act (Act VII) of 1870.

ANNUAL RETURN OF RECEIPTS AND DISBURSEMENTS ON ACCOUNT CIVIL COURT AMEENS, &c.

C. O., 1872, *No.* 12, *April 8th, and C. M.*, 1875, *No.* 2, *January 28th.*

The Court request that annual returns* may be made by each District Judge and Judicial Commissioner of the receipts and disbursements on account of civil court ameens and other commissioners appointed under sections 180 and 181, Act VIII of 1859, in connection with his own court and the courts subordinate thereto. The returns should include all money received and credited, and all payments made on account of ameens' fees or remuneration of commissioners, whether appointed under Act XII of 1856, or temporarily employed; but should not include boat hire or other travelling expenses† which are payable to the officer direct.

* Originally quarterly, now annual.—C. M., 1875, No. 2, January 28th.

† *Vide* circular orders No. 113, dated 12th March 1858, No. 30, dated 10th October 1860, and No. 4, dated 20th January 1864, page 145.

2. The returns should be made in the form appended.

3. At the foot of the statement, and after the total of the expenditure on account of *salaries*, an addition should be made of 10 per cent. on account of *pensions*, as expressly desired by the Government of India.

4. The Court will expect these returns to be carefully prepared and promptly submitted. A similar return will be furnished by the Accountant-General, with which the local returns now prescribed will be checked. [At the time when this order was issued, payments on account of ameens' fees was received in money. Now they are realised in stamps, and consequently the check contemplated in the last sentence is not available.]

Statement showing receipts and disbursements on account of the employment of Ameens in the District of during the year

1	2	3	4	5	6	7	8
Name of Court.	Receipts on account of employment of Ameens permanently entertained.	Disbursements on account of employment of Ameens permanently entertained.	Receipts on account of Ameens temporarily employed.	Disbursements on account of Ameens temporarily employed.	Amount received as fees paid for the employment of Moonsifs as Commissioners.	Ameens permanently employed, 1st and 2nd grade.	Remarks.

DAILY REGISTERS OF RECEIPTS AND DISBURSEMENTS ON ACCOUNT OF AMEENS' FEES, WHEREON THE ABOVE ANNUAL RETURN IS TO BE BASED.

C. O., 1874, *No.* 11, *March 14th.*

The returns made to the Court for 1872-73, under the above circular order No. 12, dated 8th April 1872, having been found inaccurate, owing to the inclusion, in column 2,* of commission on execution sales where such sales have been effected by the nazir or other officer not being a civil court ameen, and the object of the circular order being to ascertain the financial results of the employment of ameens only, the Court are now pleased to prescribe the accompanying forms of registers to be kept up in all the regular civil courts subordinate to the High Court.

* "Receipts on account of the employment of Ameens permanently entertained"

2. The register of receipts, it will be seen, has been so framed as to exclude all moneys not due to the employment of civil court ameens, and the register of disbursements so as to show only salaries paid and excess payments refunded. The first return to be submitted in this form of statement will be for the financial year 1873-74.

The forms of registers of receipts and disbursements on account of civil court ameens prescribed by [the above] circular No. 11 of 14th March 1874 were intended, as stated therein, *to be kept up in all the regular civil courts* with a view to furnishing materials for the returns to the Court under circular order No. 12, dated 8th April 1872.—(*C. M.*, 1874, *No.* 14, *June 12th*).

Register of Receipts on account of Civil Court Ameens. District of

1	2	3	4	5	6	7
Date.	Court.	Nature of employment.	Ameen employed.	Time occupied.	Amount.	REMARKS.
					Rs. A. P.	
1st Jan.	Sub-Judge ...	Local investigation mouzah Suntoshpore	Shekh Dilawur	10 days ...	50 0 0	Rs. 20 refunded.
3rd „ ...	Moonsif of Sundip.	Sale of moveables	R. C. Doss ...	1 day ...	5 0 0	

Register of Expenditure on account of Civil Court Ameens. District of

1	2	3	4
Date.	Nature of expenditure.	Amount.	REMARKS.
		Rs. A. P.	
2nd January ...	Salary of Dilawur	70 0 0	
3rd „	Refund overcharge in case of deposited.	15 0 0	

SMALL CAUSE COURT RETURNS.

Latest date for submission of Monthly Returns from Small Cause Courts.

The attention of all Judges of Courts of Small Causes is drawn to paragraph 19 of the proceedings of the late Sudder Court embodied in their resolution of 1st July 1861 (which was communicated to all Judges of Small Cause Courts), which requires the submission of their monthly returns to the Court not later than the 10th of each month following that to which the statement refers, and they are requested, with a view to secure certainty of receipt by the above date, to despatch the returns in question not later than the 5th.—(*C. M.*, 1872, *No.* 9, *April 25th.*)

Monthly Returns from Small Cause Courts to High Court.

C. M., 1872, *No.* 3, *February 9th.*

All Judges of Courts of Small Causes are required to make their monthly returns of work to the High Court in the two forms sent herewith.

2. Where a Judge presides over more than one court, he should show the work of each court distinctly in the manner described in circular order No. 12, dated 23rd June 1865. The work, however, of two or more courts, though exhibited separately, should not be entered in different statements, but should appear in different sections of the same statement, so as to admit of the general results being exhibited in aggregate at the foot of the returns.

3. The Superintendent of Stationery has been furnished with samples for the supply of indents. These should specify the number of courts presided over by the indenting Judge.

Statement of Cases on the file of the *Court of Small Causes of* *during the month of* 187

1	2	3	4	5	6	7	8	9	10		11		12	13	14	15
Description of cases.	Pending at the end of 187 .	Instituted during the month of 187 .	Total before the court.	Compromised.	Withdrawn.	Dismissed on default.	Confession, plaintiff absent.	Confession, plaintiff present.	Ex parte. Judgment for plaintiff.	Ex parte. Judgment for defendant	Contested. Judgment for plaintiff.	Contested. Judgment for defendant.	Total disposed of	Pending at close of	Of these pending over six weeks.	Remarks, (including explanations regarding cases pending over six weeks.)
Court at 1. Money claims, whether on bond or other contract ...																
Court at 2. Rent of houses																
Court at 3. Claims for personal property																
Court at 4. Claims for damages																
Total ...																
Court at 1. Money claims, whether on bond or other contract ...																
Court at 2. Rent of houses																
Court at 3. Claims for personal property																
Court at 4. Claims for damages																
Total ...																
Court at 1. Money claims, whether on bond or other contract ...																
Court at 2. Rent of houses																
Court at 3. Claims for personal property																
Court at 4. Claims for damages																
Total ...																
Total. 1. Money claims, whether on bond or other contract ...																
Total. 2. Rent of houses ...																
Total. 3. Claims for personal property																
Total. 4. Claims for damages																
Total ...																

Statement of Applications for execution of Decrees on the file of the Court of Small Causes of ..... *during the month of* ..... 187 .

1	2	3	4	5	6	7	8	9	10	11	12
Denomination of Court.	Pending at the end of 187 .	Applications filed during 187 .	Total.	Executed completely.	Executed in part.	Struck Off, judgment creditor not proceeding	Total disposed of.	Pending at the end of 187 .	Three months and upwards.	Six months and upwards.	Cause of delay.

Form of Diary to accompany Monthly Return from Small Cause Court.

C. O., 1873, *No.* 1, *January* 14*th.*

The High Court is pleased to prescribe the form of diary appended hereto, to be attached to the monthly returns of work submitted by Judges of Small Cause Courts. The following instructions should be carefully attended to in its preparation:—

The 3rd column to be filled up for all days of sitting.

When there has been no sitting, and the day is not an authorized holiday, the cause of not sitting should be shortly stated. The mode of filling up the diary is exemplified.

2. The form will be supplied separately where there is a stock of forms of the nature prescribed by circular memo. No. 3, dated 9th February 1872, and will be printed on the back of new forms of the statement of cases as they are supplied to Small Cause Court Judges.

Diary of the Court of Small Causes of *for the month of* 187 .

1	2	3
Date.	How employed.	Hours of sitting.
1st	Sunday	.....
2nd	Sat in Howrah Court	10-30 A.M. to 5 P.M.
3rd	Ditto ditto	10-30 „ to 5-15 P.M.
4th	Gazetted holiday	.....
5th	Sat in Serampore Court	10 A.M. to 5 P.M.
6th	Sat as Subordinate Judge	.....

Quarterly Returns of Tullubana receipts and disbursements from Small Cause Courts to District Judge.

The Court is pleased to direct that for the future the quarterly return of receipts and disbursements on account of peons' tullubana, prescribed in paragraph 8 of circular order No. 10A, dated 26th April 1864, shall be submitted by Judges of Small Cause Courts through the District Judge under whom these courts are placed by section 22 of the Court Fees Act of 1870 for the purpose of that section.—(*C. M.*, 1875, *No.* 6, *April* 8*th.*)

1	2	3
Court.	Disbursement on account of the salaries of peons of such court during the past quarter.	Receipt on account of tullubana fees.

ANNUAL RETURNS FROM SMALL CAUSE COURTS TO DISTRICT JUDGES FOR INCORPORATION WITH THE DISTRICT STATEMENTS OF CIVIL JUSTICE ADMINISTRATION.

C. Q., 1871, *No.* 5, *February 25th.*

The Court directs that Judges of Small Cause Courts will submit annual returns of their work to the Judges of the districts in which their courts are respectively situated in the four forms appended hereto* in supersession of the returns hitherto made to the Court direct under the provisions of circular order No. 12, dated 19th December 1862. The returns now prescribed will begin with the work of the past year, 1870.

* Original Nos. 6, 7, 8 and 10 (Judicial).

2. These instructions will not interfere with the *monthly* returns Nos. 1 and 2, prescribed by the circular order No. 12, dated 19th December 1862. These will continue to be made to the High Court as heretofore.

JUDICIAL STATEMENT 6.

Statement showing the number and description of Civil Suits instituted in the Court of Small Causes at *in the year* 18

1	2		3		4		5		6		7		8		9		10		11
Class of tribunals.	On written obligation.		On unwritten.		On account stated.		Money had and received.		Goods sold.		Breach of contract not mentioned above.		Rent not falling under the Rent Law.		Moveable Property or value thereof.		Damages.		Remarks.
	Rs. 500 and under.	Above Rs. 500.	Rs. 500 and under.	Above Rs. 500.	Rs. 500 and under.	Above Rs. 500.	Rs. 500 and under.	Above Rs. 500.	Rs. 500 and under.	Above Rs. 500	Rs. 500 and under.	Above Rs. 500.	Rs. 500 and under.	Above Rs. 500.	Rs. 500 and under.	Above Rs. 500.	Rs. 500 and under.	Above Rs. 500.	

JUDICIAL STATEMENT 7.

Statement showing value of suits disposed of in the Court of Small Causes at *in the year* 18

1	2	3	4
Value of suits.	Number of suits disposed of.	Total value of suits.	REMARKS.
Not exceeding Rupees 5			
„ „ „ 20			
„ „ „ 100			
„ „ „ 500			
			* *See C. O., 1872, No. 16, dated 25th April.*

JUDICIAL STATEMENT 8.

Statement showing the general result of the trial of suits in the Court of Small Causes at *in the year* 18 .

1	2	3	4	5	6	7	8	9	10	11	12	13	14		15	16	17		18		19	20
													CONTESTED.						AVERAGE DURATION OF SUITS.			
Class of Courts.	Suits remaining from last year.	Instituted in 18 .	Received by transfer.	Total for disposal.	Transferred to other courts.	Plaint rejected or returned.	Dismissed for default.	Withdrawn with leave.	Compromised.	Decreed on confession.	Decreed *ex parte*.	Dismissed *ex parte*.	Judgment for plaintiff in whole or part.	Judgment for defendant.	Total disposed of.	Pending.	Over two months.	Over four months.	Contested.	Uncontested.	Referred to arbitration.	REMARKS.

JUDICIAL STATEMENT 10.

Statement showing the execution of the decrees of the Court of Small Causes at in the year 18

1	2				3	4	5	6	7						8
Class of Courts.	Applications to execute decrees.				Decrees completely executed.	Decrees partially executed.	Pending at the end of	Decrees executed by possession being given.	Nature and Number of coercive processes issued.						Remarks.
	Pending.	Filed.	Received by transfer.	Total.					Imprisonment of person.	Moveable property.		Immoveable property.		Orders under section 245, Code of Civil Procedure.	
										Attached.	Sold.	Attached.	Sold.		

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TO

CIRCULAR ORDERS

OF THE

HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

CIVIL.

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